

# **COUNTY GOVERNMENT IN KENTUCKY**

**(Revised 1998)**

## **Informational Bulletin No. 115**

Legislative Research Commission  
Frankfort, Kentucky  
November, 1998

This bulletin has been prepared by the Legislative Research Commission  
and paid for from state funds.



## FOREWORD

This publication was first compiled as *Fiscal Courts: Powers and Duties*, in 1970. In 1976 it was revised and expanded under the title of *County Government in Kentucky*. Subsequent revisions have retained this title.

This publication contains information relevant to the structure and administration of county government and special districts, along with information regarding the roles of county officials. It is designed to function as a narrative aid to understanding the many statutes relating to county government. Please understand that this publication is not a substitute for the *Kentucky Revised Statutes*.

It incorporates the statutory changes made by the 1996 General Assembly along with some pertinent court decisions and opinions of the Attorney General.

This latest revision was prepared by Mark E. Mitchell and Cheryl J. Walters.

DON CETRULO  
Director

The Capitol  
Frankfort, Kentucky  
November, 1998



## TABLE OF CONTENTS

FOREWORD .....	i
TABLE OF CONTENTS .....	iii
LIST OF TABLES .....	xi
INTRODUCTION .....	xiii
 I. HISTORICAL OVERVIEW OF COUNTY GOVERNMENT .....	 1
Creation of Counties .....	1
Constitutional Provisions Relating to County Offices .....	2
Other Constitutional Provisions Relating to County Government .....	4
 II. FISCAL COURT .....	 7
Development of the Office of Justice of the Peace .....	7
Fiscal Court Under Early Kentucky Constitutions .....	7
Fiscal Court Form .....	8
Fiscal Court Composition .....	9
Justices of the Peace .....	9
County Commissioners .....	10
Reapportionment of Fiscal Court Districts .....	10
The Fiscal Court Today .....	11
General Powers and Responsibilities .....	12
County Home Rule .....	12
Fiscal Court Meetings and Procedures .....	14
Quorum .....	14
Judicial Status .....	14
Presiding Officers .....	14
Records and Documents .....	15
Tie Votes .....	15
County Ordinances .....	15
Ordinance Procedures .....	16
Open Meetings and Open Records .....	16
County Officials and Fiscal Court Sessions .....	16
County Attorney .....	16
Sheriff .....	16
Fiscal Court Clerk .....	16
County Clerk .....	17
County Treasurer .....	17
 III. THE EXECUTIVE AND ADMINISTRATIVE FUNCTION .....	 19

General Executive and Administrative Powers .....	19
Financial Administration .....	20

<b>IV. TAXATION AND REVENUE .....</b>	<b>23</b>
Taxes Generally .....	23
Constitutional Limitations .....	23
Legislative Authorization .....	23
Tax Resolution Must Be Specific .....	24
Taxes Must Be Sufficient to Pay Debts in	
a 40-Year Period .....	24
Property Taxes .....	24
Constitutional Limitations .....	24
Statutory Limitations .....	25
Special Districts .....	26
Service Districts .....	26
Property Subject to Taxation .....	27
Real and Personal .....	27
Bank Shares .....	27
Local Bank Franchise .....	28
Public Service Corporations .....	28
Life Insurance Capital .....	28
Distilled Spirits .....	28
Agricultural Products .....	28
Unmined Minerals .....	29
Assessment .....	30
Property Assessment and Reassessment	
Moratoriums .....	31
Tax Collection .....	31
Real Property Taxes .....	31
Motor Vehicle Taxes .....	32
Commercial Fees and Taxes .....	32
Commercial License Fees .....	32
Alcoholic Beverage License Fees .....	33
Off-Site Waste Management Facility License Fee .....	34
Mineral Resource Production License Fees .....	35
Occupational License Taxes .....	35
Forestry Tax .....	36
Real Estate Transfer Tax .....	36
Voted Levies of Special Taxes .....	36
Payments in Lieu of Taxes .....	37
Nontax Revenue .....	37
Federal Government Aid .....	37
U.S. Forestry Service Timber Revenue	
Refund .....	37
TVA "In Lieu" Payments .....	37
Federal Block Grants .....	38
State Government Aid .....	38
Local Government Economic Assistance	
Program .....	38

Local Government Economic Development	
Fund .....	39
Local Match Participation Program .....	39
County Road Fund Aid .....	39
Coal Haul Roads .....	39
Road and Bridge Aid .....	39
Rural and Secondary Roads .....	40
Motor Truck Registration Fees .....	40
Motor Vehicle Operator's Licenses .....	40
County General Fund Aid .....	40
Dog Licenses .....	40
Legal Processes and Instruments Tax .....	40
Court Revenue Reimbursement .....	40
Volunteer Fire Department Aid .....	40
Firefighter Incentive Pay .....	40
Police Incentive Pay .....	41
Sheriff and Deputy Incentive Pay .....	42
Surface Coal Mining Permit Fee Refunds .....	42
Election Expense Refund .....	42
Parks Establishment Aid .....	42
Community Flood Damage Abatement Program .....	42
Wastewater Treatment Assistance .....	43
Jail Construction and Repair Assistance .....	43
General Government Operations Revenue .....	43
Excess Fees .....	43
Property Income .....	44
Court Space Rental .....	44
Proprietary Income .....	44
Interest Income .....	44
Tax Penalties .....	44
Borrowed Money .....	45
Community Foundations .....	45

## **V. COUNTY FINANCIAL ADMINISTRATION .....47**

General Provisions .....	47
The County Budget .....	47
Budget Preparation .....	47
Sharing of Revenues .....	49
Budget Restrictions .....	49
Required Appropriations .....	49
Limits on Appropriations .....	49
Fourth Year Restriction .....	50
Budget Funds .....	50
Transfer Between Funds .....	50
Investment of Idle Funds .....	50
Road Investment Fund .....	51



Financial Administration and Supervision .....	51
County Judge/Executive .....	51
Fiscal Court .....	52
County Treasurer .....	52
County Attorney .....	53
County Clerk .....	53
State Audits .....	53
Uniform Financial Information Reports .....	54
Borrowing and Debt Payment .....	54
Constitutional Provisions .....	54
Short-Term Borrowing .....	54
Long-Term Borrowing .....	55
Debt Administration .....	56
Debt Payment .....	56
Bankruptcy .....	56
Earnings of Sinking Funds .....	57
State Notification .....	57
General Obligation Bonds .....	57
Home Rule Bonding Power .....	57
State Local Debt Officer .....	58
Evaluation .....	59
Revenue Bonds .....	59
Interim Financing .....	60
Revenue Bond Anticipation Notes .....	61
Grant Anticipation Notes .....	61
State Assistance .....	61
State Local Finance Officer .....	61
Auditor of Public Accounts .....	61
Department for Local Government .....	62
<b>VI. GENERAL GOVERNMENT .....</b>	<b>63</b>
County Administrative Code .....	63
Purchasing and Contracting .....	63
Published Notice .....	64
Liability Insurance .....	66
General Government Activities .....	67
County Buildings, Facilities and Property .....	67
Condemnation for County Purposes .....	68
Planning and Zoning .....	69
Binding Element Enforcement Act .....	70
Area Planning Commission .....	71
Recreation .....	72
Purchase of Development Rights Program .....	71
Elections .....	72
County Libraries .....	73
Regional Libraries .....	73

Counties Containing First Class Cities .....	74
County Law Library .....	74
Librarian .....	74
Penalties .....	75
Trustees .....	75
Acts of 1916 .....	75
County Records .....	75
Record Keeping by Computer .....	75
Building Inspections .....	75
Local Corrections .....	76
Juvenile Detention Care .....	76
Juvenile Probation Officer .....	77
Charities and Hospitals .....	78
Regional Mental Health-Mental Retardation Program .....	78
County Health Boards .....	79
Disaster and Emergency Preparedness .....	80
Dog Warden .....	80
County Roads .....	81
Work on City and Subdivision Streets .....	81
Condemnation for Road Purposes .....	81
Limited Access Highways .....	81
Implied Dedication .....	82
Discontinuance of a Road .....	82
Grade Crossings .....	82
Bond Issues .....	82
County Road Engineer .....	83
Bridges, Ferries and Tunnels .....	83
Water Supply Plans .....	84
Waste Disposal .....	84
Universal Collection .....	85
Pick-Up Fees .....	85
Hazardous Waste .....	85
State Assistance .....	85

## **VII. COUNTY OFFICIALS AND PERSONNEL .....87**

Elected County Officials .....	87
County Judge/Executive .....	87
Justices of the Peace and County Commissioners .....	87
Sheriff .....	87
County Clerk .....	87
Coroner .....	87
Jailer .....	87
Property Valuation Administrator .....	88
County Attorney .....	88

Appointed County Officials .....	88
Appointment of County Officials and Personnel .....	88
County Personnel .....	89
Boards, Commissions and Administrative Positions .....	89
Constraints on Political Considerations in the Appointment of County Officials and Personnel .....	89
County Officials' Salaries .....	93
Expense Allowances .....	94
Personal Bonds .....	95
Retirement Plans of County Employees .....	97
The County Employees Retirement System .....	97
Termination .....	98
Eligible Membership .....	98
Contributions .....	99
Consumer Price Index Adjustment .....	99
Social Security .....	99
Health Insurance .....	100
County Police Force Merit System .....	100
General Regulations .....	101
Disciplinary Action .....	101
Deputy Sheriff Merit Boards .....	101
County Fire Department .....	102
Veterans' Rights .....	102
Code of Ethics .....	103
<b>VIII.MERGED GOVERNMENT .....</b>	<b>105</b>
Urban-County Government .....	105
Formation .....	106
Powers .....	106
City/County Compact .....	107
Charter County Government and Consolidation of Services .....	107
Adoption .....	107
Powers and Duties of Charter County Governments .....	108
<b>IX. SEMI-INDEPENDENT AUTHORITIES AND AGENCIES .....</b>	<b>111</b>
Local Air Boards .....	111
Transit Authorities .....	112
Creation .....	112
Purpose and Powers .....	112
Board Membership .....	113
Officers, Director, Employees .....	113

Bonds .....	113
Riverport Authorities .....	114
Creation .....	114
Purpose and Powers .....	114
Board Membership .....	114
Funding the Authority .....	114
Housing Authorities .....	115
Creation .....	115
City-County Housing Authority .....	115
Legal Effects of Creation of Authority .....	115
County .....	115
Regional .....	115
Prerequisites for Creation of County or	
Regional Housing .....	115
Board Membership .....	116
County .....	116
City-County .....	116
Regional .....	116
Powers .....	116
Industrial Development Authorities .....	117
Industrial Buildings .....	117
Bond Issue .....	117
Lien of Bondholders .....	118
Urban Renewal Agencies .....	118
Creation .....	118
Powers .....	118
Cooperation by Public Bodies .....	119
Bonds .....	119
Exercise of Agency Powers by the County or	
Housing Authority .....	120
Urban Renewal Projects .....	120
Workable Program .....	120
Public Improvements .....	120
Prevailing Wages on Public Works .....	120
Community Improvement District .....	120
Board of Commissioners .....	120
Tax .....	121
Powers .....	121
Joint Sewer Agencies .....	121

## **X. SPECIAL DISTRICTS .....123**

Criticisms of Special Districts .....	124
Creation of Special Districts .....	124
Statutes on Special District Accountability .....	125
Notice of Creation .....	125
Annual Reports, Budgets and Audits .....	125

Uniform Financial Information Report .....	125
Appointment and Removal of District Board	
Members .....	126
Fiscal Court Involvement .....	126
Special District Dissolution .....	126
Fire Protection Districts .....	128
Taxation and State Aid .....	128
Board of Trustees .....	128
Ambulance Service .....	129
Mutual Aid Agreements .....	129
Installation of Fire Hydrants .....	129
Law Enforcement Powers of Paid Firefighters .....	129
Access to Water and Access to Property .....	129
Actions against Members or Employees of	
Districts .....	130
Audits and Legal Advice .....	130
Subdistricts .....	130
Hospital Districts .....	130
Library Districts .....	131
District Organization .....	131
Duties and Powers of the Board .....	131
Dissolution of Districts .....	131
Soil Conservation .....	131
Establishment of a District .....	132
Election of Supervisors .....	132
Nature of the District .....	132
Discontinuance of a District .....	132
Consolidation of District .....	133
Agricultural Districts .....	133
Establishment of a District .....	133
Nature of the District .....	133
Watershed Conservancy District .....	134
Board of Directors Election .....	134
Powers of the Board of Directors .....	134
Assessments .....	135
Water Districts .....	135
Creation .....	135
Commissioners .....	135
Legal Service .....	135
Superintendent .....	135
Procedure for Change of Districts .....	135
Bonds and Assessments .....	136
Surcharge for Purposes of Expansion .....	136
Federally Financed Projects .....	136
Planning for Fire Protection .....	136
Merger .....	137
Discontinuance .....	137

Joint Operation of Water Sources .....	137
Water Project Interest Rate Buy Down Fund .....	137
Levee Districts .....	137
Board's Power to Tax .....	138
Drainage Districts .....	138
Drainage Act of 1912 .....	138
Taxes .....	138
Bonds .....	138
Discontinuance .....	138
Drainage Act of 1918 .....	138
Election of the Board .....	138
Taxes .....	139
Bonds .....	139
Discontinuance .....	139
Swampland Improvement Districts .....	139
Surface Drainage Districts .....	139
Water Resources, Activities and Restrictions .....	139
Withdrawal of Water .....	139
Plans for Dams and Levees .....	140
Kentucky Infrastructure Authorit .....	140
Public Health Taxing Districts .....	140
Imposition of Special Ad Valorem Public	
Health Tax .....	141
Public Health Taxing Districts by General	
Assembly .....	141
Air Pollution Control Districts .....	141
Board Members .....	141
Hearing Board .....	142
State Oversight .....	142
Sewer Districts .....	142
Joint Metropolitan Sewer Districts .....	142
Board Members .....	143
Powers .....	143
Citizen Appeal Procedures .....	143
Waste Management Districts .....	144
Formation .....	144
Board of Directors .....	144
Powers .....	144
Solid Waste Management Plans .....	145

## **XI. INTERGOVERNMENTAL RELATIONS .....147**

Interlocal Cooperation Act .....	147
Appropriations From One Local Government to	
Another .....	148
Area Development Districts .....	148
State Government Agencies .....	149

The Department for Local Government .....	149
The State Local Finance Officer .....	149
The State Local Debt Officer .....	149
The Governmental Services Center .....	149
<b>FOOTNOTES .....</b>	<b>151</b>
<b>BIBLIOGRAPHY .....</b>	<b>155</b>

## LIST OF TABLES

### TABLE

I.	Constitutional Amendments .....	5
II.	Comparison of Fiscal Court Form .....	9
III.	Average Revenues from Local, State and Federal Sources .....	24
IV.	Special Districts with Taxing Power .....	27
V.	Optional Ad Valorem Taxes by the Fiscal Court .....	29
VI.	Fiscal Court License Fees .....	32
VII.	County Alcoholic Beverage License Fees .....	33
VIII.	General Obligation Bonds .....	58
IX.	Revenue Bonds .....	60
X.	Matters to be Published by Fiscal Court .....	66
XI.	Eminent Domain Authority .....	69
XII.	County Appointive Offices .....	91
XIII.	Personal Bonds - Appointed Officials .....	96
XIV.	Personal Bonds - Elected Officials .....	97
XV.	Airport Financing .....	112
XVI.	Special Districts .....	127





## INTRODUCTION

This publication is intended as an overview of the structure and operations of county government. In an attempt to simplify and condense statutory law, many details have been omitted. For this reason, this bulletin should be used only as a guide to, and not a substitute for, the *Kentucky Revised Statutes*.

In summarizing the statutes an effort has been made to paraphrase material accurately, with a minimum of subjective interpretation. Yet the meaning of statutory law is subject to differences of understanding, and the way a statute is interpreted is clearly of great importance. For this reason, interpretations of the statutes by the courts and the Attorney General have been cited throughout.

Court rulings on the constitutionality and application of statutes are law, of course, until modified or overturned by the court. The reader should note, however, that the inclusion of cases has been selective and does not represent an exhaustive compilation of the cases on a statute. Each year many county officials request the written opinions of the Attorney General on questions of law pertaining to their powers and duties. The opinions of the Attorney General, interpreting various statutes, have been cited throughout this document. While it must be remembered that such opinions are not law and are not legally binding, they are important as researched and informed views on the meaning of the statutes.

Finally, the reader is directed to the Legislative Research Commission Informational Bulletin No. 114, Duties of Elected County Officials, for an in-depth discussion of the powers and duties of elected county officials.

## **CHAPTER I**

### **HISTORICAL OVERVIEW OF COUNTY GOVERNMENT IN KENTUCKY**

County government in Kentucky is a product of historical development. The idea of the county as a unit of local government dates from early English history. In England the county or shire, as it is sometimes called, acted as a unit for judicial administration, law enforcement and highway maintenance, and such county offices as sheriff, justice of the peace and constable developed there.<sup>1</sup> This institution of local government, like many other elements of English culture, found broad usage throughout the colonies of the new world. Basic concepts of local government also accompanied the first settlers of this state in their travels from Virginia and other colonies and were incorporated into the Kentucky Constitutions of 1792 and 1799.<sup>2</sup>

Kentucky's first existence as an organized political entity was as a part of the Virginia County of Fincastle. In 1776, settlers from Kentucky sent representatives to the General Assembly of Virginia seeking creation of a separate Virginia county. The settlers sought such status from Virginia's government in order to secure better protection against Indian raids and to authorize the creation of a county government in Kentucky.<sup>3</sup> In December of 1776, George Rogers Clark secured the passage of a bill dividing Fincastle County and creating Kentucky County. The Virginia Assembly, in 1780, reorganized the county structure of Kentucky in reaction to population growth and abolished Kentucky County, creating the counties of Lincoln, Jefferson and Fayette in its stead.<sup>4</sup> By the time Kentucky was admitted to the Union on June 1, 1792, nine counties had been established, and during the eight years following statehood forty-three more counties were created.<sup>5</sup>

#### **Creation of Counties**

At the time of the 1850 Constitution, Kentucky had one hundred counties. In the forty years before the constitutional convention of 1890 an additional nineteen counties were created, making this state the second most

constitutionally subdivided state in the United States per square mile. There were several reasons for this growth in the number of counties. Some new counties were created for the legitimate purpose of making the county seat more accessible in those days of poor roads and transportation by horse. In other cases, however, counties were created for political and economic reasons. If a particular part of a county was at odds with the politics and policies of those controlling the courthouse, they might simply form a new county.<sup>6</sup>

The delegates to the 1890 constitutional convention felt that too many counties existed already and sought to prevent the further subdivision of the state by placing constitutional restrictions on the formation of new counties. Under the 1891 Constitution, the General Assembly now may not form a new county with an area of less than 400 square miles or a population of less than 12,000. In forming a new county, the General Assembly must not reduce any existing county to an area of less than 400 square miles or a population of less than 12,000, and the boundary line of a newly formed county must not pass within ten miles of the county seat of an existing county (Sections 63 and 64). These safeguards against the growth in the number of counties have been successful. Only one county has been established under the Constitution of 1891: McCreary County, which was formed in 1912.

Provisions protecting existing county boundaries and county seats were also made a part of the present Constitution. No territory may be taken from an existing county, except territory to be used to form a new county, unless a majority of the voters of the affected county approve. The petition of a majority of the voters of territory to be stricken from a county is required in order for the county judge/executive to call an election on the question (KRS 67.030). Any portion of a county stricken from the county remains liable for its share of the debt of the county from which it is taken. No existing county seat may be moved to another city without the approval of two-thirds of the voters of that county. Finally, the General Assembly has the power to abolish any existing county at any time (Sections 63, 64, and 65).

The General Assembly's power to abolish counties has served as a control over county government. Just days before the constitutional convention met in 1890, the

Courier-Journal reported that the "war" was on again in "rowdy Rowan" County and described a running gunfight in the streets of Morehead.<sup>7</sup> These were days of feuding and general lawlessness throughout much of the state, a condition of which the delegates were painfully aware. The General Assembly probably had the inherent power to abolish counties under the first three constitutions, but the present Constitution expressly states that it has such power (Section 63). This expression was intended to give the General Assembly an axe to hang above the heads of the counties -- they must enforce the law or be abolished. This provision has never been invoked by the General Assembly.

### **Constitutional Provisions Relating to County Offices**

Kentucky's first constitution created only two elective county offices -- sheriff and coroner. The second constitution did not create any elective offices. Under that constitution all local offices were filled by appointment of either the Governor or the county court, and only the sheriff served for a definite term. All other officers could hold office for life if they maintained good behavior. Due mainly to this life tenure, a sort of aristocracy grew up around these local officials. As the fervor of Jacksonian Democracy grew in the nineteenth century, however, so did Kentuckians' dissatisfaction with this mini-aristocracy. When the third constitutional convention met in 1850, only slavery received more of the delegates' attention than did the manner of selecting public officials. The reforms made by the 1850 Constitution were sweeping indeed. All county offices were made elective, and several minor offices were raised to constitutional stature. These features are retained in our present constitution.

The Constitution of 1891 requires that the following officers be elected in each county: a county judge, county court clerk, county attorney, sheriff, jailer, coroner, surveyor, three to eight justices of the peace and three to eight constables. In counties where the fiscal court is composed of commissioners, three commissioners must also be elected (Sections 99 and 142).

The Constitution says little regarding the duties and powers of these offices, and the General Assembly has enacted statutes assigning specific duties to each office.

Most offices have a number of duties. Some, however, such as those of surveyor and constable, have become outdated and retain few duties.

Originally, the Constitution provided for an elected office of county assessor. This office has been abolished by the General Assembly, as permitted by Section 104 of the Constitution, and replaced by the statutory office of property valuation administrator.

The judicial amendment to the Constitution, which was ratified by the voters in 1975, had a profound impact on several county offices. It created a new unified court system, abolishing the quarterly court, county court and justices' court and relieving the county judge and justices of the peace of their judicial duties.

Kentucky is the only state with an independent elective office of jailer.<sup>8</sup> In most other states the job of operating the local jail is performed by the office of the sheriff. The Kentucky Constitution does permit the General Assembly to consolidate the offices of jailer and sheriff. Though several attempts have been made to consolidate the offices statewide, consolidation is currently required only in counties containing a city of the first class or an urban-county government (KRS 71.110).

All of the county officers named in the Constitution normally serve four-year terms (Section 99). Because of a constitutional amendment adopted in 1992, there was a one-time interruption in this schedule. County constitutional officers elected in 1993 and 1995 were elected for five-year terms. Those elected in 1998 and thereafter will serve four-year terms.

The county officers named in the Constitution may succeed themselves in office (Section 99). In November, 1984, the voters of the Commonwealth ratified a proposed amendment to the State Constitution which allows sheriffs to succeed themselves in office. Before that time, a sheriff was not allowed to serve consecutive terms, nor was a sheriff allowed to serve as his or her successor's deputy.

The Constitution sets the qualifications for county officials. The county clerk must be at least twenty-one years of age, while all other elected officials must be at

least twenty-four. All candidates for office must be citizens of Kentucky. They must have resided in the Commonwealth for at least two years and in the county or district in which they are candidates for at least one year preceding their election to office (Section 100). While they hold office, all of these officers must reside within the county or district in which they hold office (Section 234). Candidates for county attorney must have practiced law for at least two years before they are eligible for that office (Section 100).

Section 100 of the Constitution also requires that a candidate for the office of clerk procure certification from the court of appeals or of a circuit court that he is qualified for office. The Attorney General has advised, however, that this requirement no longer applies to candidates for the office of county clerk, since the county clerk no longer serves as clerk to a judicial court (OAG 93-14).

The Constitution also contains a number of provisions which disqualify certain individuals from holding office. For example, those who might have a conflict of interest because they have held other public offices are disqualified (Sections 44, 165, and 237), as are persons convicted of certain corrupt election practices or other felonies (Section 150). Any public officer who receives a profit from public funds is also disqualified from office (Section 173). The General Assembly must enact suitable laws to bar from office anyone who uses corrupt election practices (Section 151).

County officers may be removed from office by impeachment, or upon conviction for misconduct in office, or by any other procedure which the General Assembly may establish (Sections 66, 67, 68, and 227). The General Assembly may also enact laws which permit deductions from officials' salaries for any neglect of their official duties (Section 235).

The Constitution provides a rather complex scheme for filling vacancies in county or city offices. These are filled either by election or by appointment, depending upon the amount of time remaining in the term when the vacancy occurs (Section 152).<sup>9</sup>

## **Other Constitutional Provisions Relating to County Government**

While establishing the county offices and setting the terms and means of filling these offices, the first three Kentucky constitutions left other aspects of county government's form to the legislature. The fourth and present constitution (1891), however, contains a number of detailed provisions relating to county government. These sections limit county revenue sources, limit county ad valorem taxation and debt, regulate the handling of fee moneys in certain counties, and otherwise define the operation of county government and restrict the legislature's power over county government. In large part these restrictions were reactions to the poor fiscal management, corruption, patronage, exorbitant fees and inefficient administration that characterized county government between 1850 and 1890.<sup>10</sup>

Various criticisms have been made of the structure the Constitution of 1891 imposes on county government. A common complaint has been that this Constitution is too rigid.<sup>11</sup> It has been argued that in attempting to meet the problems of local government in the 1890's the drafters of the Constitution left counties ill-prepared to meet the problems of modern urbanized counties and the growing demand for services from county government. In particular, these critics point to the uniform organizational structure of county government that must be followed regardless of county population and economic and social conditions. The practice of filling the several county offices by popular election has also been criticized. In this regard it has been suggested that several of the clerical and administrative functions now performed by elected officials might be better performed by officials appointed by a county chief executive.<sup>12</sup>

Despite the criticisms of scholars, the electorate has, for the most part, been reluctant to change the Constitution. In 1966 an extensive revision of the Constitution was rejected by the voters. As Table I shows, the voters have also rejected most attempts at more limited amendments to provisions concerning local government. It is interesting to note, however, that repeated attempts to amend a particular section have led to success. Table I indicates that voters rejected amendments to Section 246, relating to the \$5000 salary limit, in 1925, 1927, and



1943. But in 1949, Section 246 was amended by the substitution of higher salary limits. Similarly, the electorate rejected sheriffs' succession in 1959, 1973, and 1981, but approved it in 1984.

**TABLE I**  
**CONSTITUTIONAL AMENDMENTS RELATING TO COUNTY GOVERNMENT**

<b>Year on Ballot</b>	<b>Section Affected</b>	<b>Effect</b>
---------------------------	-----------------------------	---------------

ADOPTED BY VOTERS

1919	227	Permit removal of local law enforcement officers for neglect of duty.
1949	246	Repeal \$5,000 salary limit and substitute limits of \$12,000, \$8,400 and \$7,200.
1975	various	Judicial amendment.
1984	99	Permit reelection of sheriffs.
1992	99 and others	Require county constitutional officers elected in 1993 to serve five-year terms.
1994	156a, 156b, 157, 157b, & 158	Deals with local government indebtedness, tax rates, and General authority over cities.

REJECTED BY VOTERS

1925	246	Would have increased \$5,000 salary limit for certain officials.
1927	246	Would have abolished \$5,000 salary limit and substituted a provision that the General Assembly should fix reasonable compensation.
1931	158	Would have raised the debt limits of cities and counties in certain cases.
1937	New Section	Would have permitted the General Assembly to reorganize local government and would have permitted the consolidation of cities and counties.
1943	246	Would have removed the \$5,000 salary limit.
1959	99	Would have made sheriffs eligible to run for unlimited reelection.
1963	246	Would have abolished the salary limit.
1973	99	Same as for 1959 above.
1981	99	Same as for 1959 above.
1990	Various	Would have altered the structure and financing of local government.



## **CHAPTER II**

### **FISCAL COURT**

#### **Development of the Office of Justice of the Peace**

The office of justice of the peace originated in thirteenth century England. At first, the justices of the peace were concerned primarily with law enforcement, but the office eventually took on a number of judicial duties. Over several centuries the duties of the office came to include administrative powers, and by the seventeenth century, the quarter session, a gathering of the justices of an English county, had extensive administrative duties, such as care for county roads, bridges and property, and levy of property taxes.<sup>13</sup>

#### **Fiscal Court Under Early Kentucky Constitutions**

Kentucky's first two constitutions provided for the appointment of justices of the peace. These constitutions did not specify the duties of this office, nor did they establish a body for the administration of county business.

The Kentucky Constitution of 1850 provided for a county court, made up of a county judge and two associates, to conduct the business of the county, and it also established a court of claims in each county, composed of the county judge and the justices of the peace. The county court was soon abolished by the legislature, as permitted by the Constitution, and the court of claims became the primary governing body of the county, levying taxes, making appropriations and otherwise controlling county affairs. This body is the forerunner of our present fiscal court.

The 1850 Constitution did not specify the number of justices of the peace a county should have. The Constitution only provided that the county was to be divided into election precincts, with each precinct entitled to elect two justices of the peace. Without a constitutional limit, the number of justices per county gradually increased, and it has been estimated that by 1889 there were around two thousand justices statewide, an average of nearly seventeen per county.<sup>14</sup>

At the 1890 Constitutional Convention there was considerable sentiment in favor of establishing the

commission form of government for all the counties of the state. The determination of the structure of county government was delegated to the Committee on County Courts. The committee was reluctant to completely abolish the court of claims, but it did provide that the county governing body should be titled the "fiscal court." The original proposal read as follows:

The General Assembly shall have power to create a fiscal court in the several counties for transaction of any and all county business. The County Judge shall be ex-officio Presiding Judge of said Court.<sup>15</sup>

At the same time, the report provided for the continuation of the office of justice of the peace, stating that a county must have at least three and not more than eight justices.<sup>16</sup>

It is obvious that the Committee on County Courts would have preferred to establish the commission form statewide, but an amendment was adopted which permitted the counties to choose either the commission form or the justice of the peace form of fiscal court.

Will Miller, the amendment's sponsor, argued that this arrangement for the county court would essentially maintain the practice under the old constitution except that the reduced number of justices of the peace would permit them to be more efficient than before. Miller believed that this magistrate system would allow every portion of the county to be represented, as opposed to the commission form, which he thought could not be truly representative.<sup>17</sup>

### **Fiscal Court Form**

As finally adopted, Section 144 of the Constitution requires that a county have a fiscal court made up of either the county judge and from three to eight justices of the peace or the county judge and three county commissioners. The important difference in the two types of fiscal courts is the manner of election of their members: justices of the peace or magistrates, as they are sometimes called, are elected from districts in the general election, while commissioners are elected from the county at large in general elections (Section 144). The legislature has enacted procedures for allowing the voters

of a county to choose their form of fiscal court (KRS 67.060).

The steps for switching from a magistrate form of fiscal court to a county commissioner form are laid out in KRS 67.050. The process is begun by the presentation to the county judge/executive of a petition signed by at least fifteen percent of the number of votes cast in the last presidential election, or 1,200 registered voters of the county, whichever is less. On receipt of this petition the judge/executive calls for the matter to be placed on the ballot at the next regular election, if the order is filed with the county clerk not later than the second Tuesday in August preceding the day of the regular election, in order for the voters to decide which sort of fiscal court they favor. If a majority of the voters favor a county commission form of fiscal court, the county judge/executive must, before the next regular election for county officers, divide the county into three commissioner's districts, as provided in KRS 67.060. Steps for moving from a commissioner form of fiscal court to a justice of the peace form are also contained in KRS 67.050. This process is similar to that just described. Through a petition and referendum procedure the voters are asked whether they desire a fiscal court made up of the county judge/executive and a specified number of magistrates. If a majority of the voters prefer the magistrate form of fiscal court, the change in the court's makeup is effective upon the assumption of office of justices of the peace elected at the next regular election for that office.

Most Kentucky counties are governed by fiscal courts composed of the justices of the peace and the judge/executive. One hundred and six of Kentucky's 120 counties have this type of governing body. However, the fourteen counties with the commissioner form include most of the Commonwealth's most populous counties, so nearly half of all Kentuckians actually live in counties with a county commissioner type of fiscal court (See Table II).

**TABLE II**  
**COUNTIES WITH THE COMMISSIONER FORM OF FISCAL COURT**

<b>COUNTY</b>	<b>POPULATION*</b>
Bath	9,692

Boone	57,589
Boyd	51,150
Campbell	83,866
Daviess	87,189
Fayette	225,366
Floyd	43,744
Greenup	36,742
Jefferson	664,937
Johnson	23,248
Kenton	142,031
McCracken	62,879
Mason	16,666
Montgomery	19,561

\*1990 Census

### **Fiscal Court Composition**

By virtue of Section 144 of the Constitution, the county judge/executive is a member and the presiding officer of the fiscal court. Over the years court rulings have established the judge/executive's powers as a fiscal court member. In fiscal court meetings the judge/executive is on equal footing with other fiscal court members. The courts have held that as a member of the fiscal court, the judge/executive has the same powers as any other member of the fiscal court, including the power to vote on all matters coming before the court.<sup>18</sup> In addition to duties related to the fiscal court, the judge/executive has extensive executive and administrative duties (see Chapter III). Other fiscal court members, the justices of the peace or county commissioners, possess official power only as members of the court. When the fiscal court is adjourned, magistrates and commissioners do not have administrative or executive power in relation to county government (OAG 78-402).

### **Justices of the Peace or Magistrates**

The Constitution requires that each county be divided into three to eight magisterial districts and that one justice of the peace be elected from each district (Section 142). Except in counties which have adopted a county commissioner form of fiscal court, the justices so elected serve as members of the fiscal court. Prior to the effective date of the judicial amendment to the Constitution, justices of the peace performed judicial

functions (Constitution, Sections 124 and 142). Today justices of the peace no longer hold any judicial power; they have, in fact, few duties outside the fiscal court.

In counties which have adopted the commissioner form of fiscal court, the office of the justice of the peace is an empty office and justices are limited to performing marriages, if the county judge/executive grants that authority. Yet the Constitution requires that justices of the peace be elected. The Attorney General has advised that in counties with the commissioner form of fiscal court, there should be three justices of the peace districts, and they should be the same as the commissioners' districts (OAG 93-40). Changes in KRS 67.045 in the 1998 Session now require these justices of the peace districts to be coextensive with the commissioner districts.

The number of justices on the fiscal court varies from county to county. KRS 67.042 sets the number of justices of the peace in counties containing a city of the first class where justices serve on the fiscal court. In a county meeting this description the law requires the election of eight justices and stipulates that these officers are to be called magistrate/representatives. In all other counties with justices serving on the fiscal court, the number of justices, within the constitutional limits of three to eight, is determined by long standing practice or tradition. When some counties were created, the size of the court of claims was made the same as that of the parent county. With the exception of the reorganization necessitated by the 1891 Constitution, the justices' districts have been remarkably stable. Apparently, the only mechanism for changing the number of justices is the reapportionment proceeding (KRS 67.045). The Kentucky Court of Appeals has ruled that the county judge/executive and the reapportionment commission have the discretion to change the number of magisterial districts during reapportionment proceedings.<sup>19</sup>

### **County Commissioners**

County commissioners are elected only in counties where the voters have adopted a commissioner form of fiscal court. In general elections commissioners are elected from the county at large. Other details concerning the manner of election of commissioners vary by county. In counties

containing a city of the first class, the three commissioners' districts have been designated A, B and C, and elections for commissioner in each district occur in different years. In primary elections in most counties, candidates for the nomination of a major political party run only in the district in which they reside and which they seek to represent. In counties containing a city of the second or third class but not a city of the first class, candidates for county commissioner are nominated by a different method. The voters of the entire county select the nominees from each district (KRS 67.060).

### **Reapportionment of Fiscal Court Districts**

The Constitution of the United States requires that members of county legislative bodies be elected in accordance with the principle of one person, one vote.<sup>20</sup> For this reason fiscal court districts must be periodically redrawn so that they will be as nearly equal in population as is reasonably possible. Reapportionment proceedings are timed according to the federal census of population that occurs at the beginning of each decade (1980, 1990 and so on). The statute provides that each county must begin reapportionment proceedings in February of the second year following the census. The fiscal court may review district boundaries at other times, and, as necessary, begin reapportionment proceedings. Reapportionment may not be initiated, however, during the period between thirty days before the deadline for filing for county offices and the regular election for county offices (KRS 67.045).

KRS 67.045 sets forth procedures for reapportioning justices' and commissioners' districts in counties where the members of the fiscal court are either nominated or elected by districts. KRS 67.060(3) provides that persons seeking nomination as county commissioners in counties containing a city of the second or third class but not a city of the first class shall be nominated at large. Even though they are nominated by all of the voters of the county, however, they must reside in their district. Therefore it is safe to conclude that the reapportionment requirements of KRS 67.045 apply to all justices' and commissioners' districts.

Reapportionment proceedings are begun by the fiscal court by publication of notice of the planned



reapportionment and appointment of a three-member reapportionment commission. Members of the commission must be over the age of twenty-one and must be residents of different districts. The county clerk also serves, ex officio, as a non-voting member of the commission.

The commissioners have sixty days from the time of their appointment to lay off district boundary lines. The product of the commissioners' work is a written report which shows the boundaries of the districts and the estimated population of each. In drawing the district lines the commissioners should be guided by the statutory standard that the districts are to be compact, contiguous (unbroken) and as nearly equal in population as is reasonably possible. Copies of the report of the commission must be filed in the office of the county clerk and with each member of the fiscal court.

From the time that the commissioner's report is filed, the fiscal court has sixty days in which to act by adopting or amending the report and enacting a county ordinance establishing the new district boundaries. Precinct lines may need to be redrawn by the county board of elections, as provided in KRS 117.055. No precinct may be in more than one justice's or commissioner's district.

Any registered voter of the county may, within twenty days after the establishment of the districts, bring an action in circuit court challenging the reapportionment plan adopted by the fiscal court. If the circuit court finds that the fiscal court has violated the provisions of KRS 67.045, the circuit court may send the matter back to the fiscal court for further action. In such a court challenge, the circuit court also may grant a prevailing party, other than the fiscal court, reasonable attorney's fees, payable from the county treasury.

### **The Fiscal Court Today**

The Constitution is silent about the exact powers and duties of the fiscal court. The job of shaping and defining the fiscal court's powers and duties was left to the General Assembly.<sup>21</sup> Traditionally, any appraisal of the power of the county fiscal court in Kentucky began with the idea that all power exercised by the court must be expressly delegated by law. Implied powers of the fiscal court were limited and confined to the authority to carry

out expressed powers.<sup>22</sup> To determine the fiscal court's powers and the way it could exercise its powers, it was necessary to search the statutes for specific authority and direction.

### **General Powers and Responsibilities**

A basic source for the powers and duties of the fiscal court is KRS 67.080. Under this statute the fiscal court is permitted to appropriate county funds for lawful purposes, buy and sell county property, supervise the fiscal affairs of the county and county officers, maintain accurate fiscal records and exercise all other corporate powers of the county. Further, the fiscal court may investigate all activities of county government and establish appointive offices and define their duties (KRS 67.080).

This statute also mandates certain fiscal court duties. The fiscal court must appropriate county funds for various purposes required by law. The fiscal court is also required to provide for the construction, operation and maintenance of county buildings, roads and other property and for the incarceration of persons arrested in the county. Finally, the fiscal court is directed to adopt an administrative code for the county (KRS 67.080). KRS 67.080(3) also limits the executive power of the fiscal court, prohibiting its exercise of executive authority except as specifically assigned by statute.

Scattered throughout the Kentucky Revised Statutes are other laws which delegate certain powers or assign duties to the fiscal court. A number of these statutes, though by no means all, are presented elsewhere in this publication.

### **County Home Rule**

The fiscal court must rely on powers delegated by the General Assembly. The county home rule statute (KRS 67.083) has been written to accommodate this constitutional requirement, while granting fiscal courts the breadth of power to operate effectively.

As first enacted in 1972, KRS 67.083 was a very broad delegation of power which permitted fiscal courts to "exercise all rights, powers, franchises and privileges not in conflict with the Constitution and statutes." The

Kentucky Supreme Court held in Fiscal Court of Jefferson County v. City of Louisville that such a delegation of legislative authority was too broad. The Court specified that delegations of power to the fiscal court by the General Assembly were permissible only if such grants of authority were "thoughtful, purposeful and deliberate delegations of known powers."<sup>23</sup>

After the Court's ruling, the 1978 Session of the General Assembly amended KRS 67.083 to grant fiscal courts the authority to enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds and employ personnel in the performance of the following public functions:

(a) Control of animals, and abatement of public nuisances;

(b) Regulation of public gatherings;

(c) Public sanitation and vector control;

(d) Provision of hospitals, ambulance service, programs for the health and welfare of the aging and juveniles, and other public health facilities and services;

(e) Provision of corrections facilities and services, and programs for the confinement, care and rehabilitation of juvenile law offenders;

(f) Provision of parks, nature preserves, swimming pools, recreation areas, libraries, museums and other recreational and cultural facilities and programs;

(g) Provision of cemeteries and memorials;

(h) Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation and wildlife;

(i) Control of floods;

(j) Facilitating the construction and purchase of new and existing housing; providing for the repair or demolition of structures which present a hazard to public health, safety or morals or are otherwise inimical to the welfare of residents of the county; providing for the redevelopment of housing and related commercial, industrial and service facilities in urban or rural areas; providing education and counseling services and technical assistance to present and future residents of publicly assisted housing;

(k) Planning, zoning and subdivision control according to the provisions of KRS Chapter 100;

(l) Adoption, by reference or in full, of technical codes governing new construction, renovation or maintenance of structures intended for human occupancy;

(m) Regulation of commerce for the protection and convenience of the public;

(n) Regulation of the sale of alcoholic beverages according to the provisions of KRS Chapters 241 through 244;

(o) Exclusive management of solid wastes by ordinance or contract, or by both, and disposition of abandoned vehicles;

(p) Provision of public buildings, including armories, necessary for the effective delivery of public services;

(q) Cooperation with other units of government and private agencies for the provision of public services, including but not limited to training, educational services and cooperative extension service programs;

(r) Provision of water and sewage and garbage disposal service, but not gas or electricity, including management of onsite sewage disposal systems;

(s) Licensing or franchising of cable television;

(t) Provision of streets and roads, bridges, tunnels and related facilities, elimination of grade crossings, provision of parking facilities, enforcement of traffic and parking regulations;

(u) Provision of police and fire protection;

(v) Regulation of taxis, buses and other passenger vehicles for hire;

(w) Provision and operation of air, rail and bus terminals, port facilities, and public transportation systems;

(x) Promotion of economic development of the county, directly or in cooperation with public or private agencies, including the provision of access roads, land and buildings, and promotion of tourism and conventions;

(y) Preservation of historic structures; and

(z) Regulation of establishments or commercial enterprises offering adult entertainment and adult entertainment activities.

Paragraph (z) was not part of the original 1978 amendment of KRS 67.083 but was added during the 1998 Regular Session.

With KRS 67.083, the General Assembly has given counties a good deal of flexibility to act in a number of areas of governmental concern. A 1988 amendment to KRS 67.083 has enhanced this flexibility by stating that county powers, other than the power to tax, may be exercised cooperatively by two or more counties, or by a county and a

city, special district or the state. Cooperation may include joint ownership of property or the exchange of services. Costs and benefits must be equal to all participating governments. If the personnel or equipment of one county are provided to another, the second county must fully compensate the first through the reciprocal provision of services or through monetary payments.

### **Fiscal Court Meetings and Procedures**

Sessions of the fiscal court are generally held at the county seat, but may be held at other county government centers in the county, following required public notice. The fiscal court is required by law to meet each month on dates set by the county judge/executive. However, the judge/executive may also call special meetings of the fiscal court at any time (KRS 67.090).

A majority of the members of a fiscal court composed of magistrates may call a special term of the court if the county judge/executive will not or cannot call the court into session (KRS 67.090). In counties where the fiscal court is made up of county commissioners, a special meeting of the fiscal court may be called by two commissioners if the judge/executive is unable or refuses to call for a meeting (KRS 67.070).

### **Quorum**

A majority of the members of the fiscal court constitutes a quorum for the transaction of business (Const., Sec. 144). A majority of a quorum is sufficient to take most types of action, but only a majority of the entire fiscal court may pass a county ordinance (KRS 67.078).

### **Judicial Status**

The Judicial Article eliminated the judicial functions and the judicial status of the fiscal court and county judge/executive, vesting judicial power exclusively in the Court of Justice. With the loss of judicial power the fiscal court is solely an administrative and legislative body with powers granted under the Constitution and statutes. In theory the change is great, but in practice fiscal courts operate much as they did before the Judicial Article.

## **Presiding Officers**

The county judge/executive usually presides over the fiscal court. In the absence of the county judge/executive, "a majority of the justices of the peace or commissioners shall elect one of their number to preside" [KRS 67.040(2)]. A deputy county judge/executive may not act as a member of or preside over the fiscal court in the absence of the county judge/executive (KRS 67.711).

## **Records and Documents**

The fiscal court is a court of record. Minutes must be kept of every meeting and submitted for approval at the next succeeding meeting. The county budget, county ordinances and other official actions of the fiscal court are a part of the permanent records of the county and must be kept in the office of the county clerk (KRS 67.100). In keeping its records, the fiscal court is aided by the fiscal court clerk, who may be the county clerk or, if the county clerk chooses not to serve, a person hired by the court (KRS 67.120).

## **Tie Votes**

The statutes provide methods for resolving tie votes in the selection of county employees, but say nothing regarding deadlocks over other matters, except for the budget. Where the fiscal court consists of magistrates, tie votes on appointment of personnel continuing longer than fifteen days are resolved by the judge/executive's appointment of the employee (KRS 67.040). The procedure for the county commission form is identical except that the fiscal court must be given a last chance to resolve the deadlock, prior to the appointment by the judge/executive (KRS 67.070).

In the case of the county budget, the statutes now explicitly require that the budget be adopted on July 1st (KRS 68.260). If there is a tie vote, so that the budget can neither be amended nor adopted by the majority, the implication of this requirement is that the budget must be adopted as presented by the county judge/executive, after approval for form and classification by the state local finance officer. The Attorney General has advised, however, that "automatic" adoption of the budget would make

the vote of the fiscal court meaningless and render the statute internally inconsistent. A tie vote would be the same as a defeat, and the county would be without a budget until one was finally adopted. The Attorney General has also advised that sanctions might be levied, under KRS 68.990, 522.030 and 61.170, against members of the fiscal court for failure to adopt a budget. In addition, a mandamus action might be brought in circuit court against the fiscal court members who voted against the budget, to require the adoption of a budget (OAG 88-45).

### **County Ordinances**

In granting counties the power to enact ordinances regulating a broad range of public functions, the General Assembly set guidelines for the application of county ordinances to state law and to cities within the county. Where a county is authorized to regulate areas also regulated by state law, county ordinances must be consistent with state law. If the state law sets a single standard of conduct, county ordinances are consistent only if they are identical to the state standards. However, if state law merely sets a minimal standard of conduct, county ordinances may be enacted which set the same or a more stringent standard (KRS 67.083).

Unless state law provides otherwise or a city sets more stringent standards, county ordinances prescribing penalties for their violation must be enforced throughout the entire area of the county, including incorporated areas. The fiscal court is required to send the mayor of each city in the county a copy of all ordinances with countywide application (KRS 67.083).

### **Ordinance Procedures**

In enacting county ordinances the fiscal court must follow certain procedures set forth in KRS 67.076 and 67.077. All ordinances must be introduced in writing and must contain a title and enacting clause. Amendments to ordinances may be made only by ordinance and the amended section must be set out in full (KRS 67.076). Proposed ordinances and ordinances passed by the fiscal court must be published in full or in summary, as provided in KRS Chapter 424. Notice of proposed ordinances must also contain information on the time, date and place where the proposal will be considered for passage. If any ordinance

is published in summary form only, the notice must also designate a place in the county where the full text is available for inspection (KRS 67.077).

### **Open Meetings and Open Records**

The fiscal court is subject to the provisions of the open meetings law (KRS 61.800 - 61.850). All fiscal court meetings are therefore open to the public except for specific deliberations set forth in KRS 61.810. Similarly, the fiscal court is among the public agencies subject to the provisions of the open records law. Access to fiscal court records is governed by KRS 61.870 to 61.884.

### **County Officials and Fiscal Court Sessions**

#### **County Attorney**

The county attorney is required to attend all sessions of the fiscal court (KRS 69.210), but the fiscal court may act in his absence. A 1961 opinion of the Attorney General expressed the view that the power of a fiscal court to act is not contingent upon the presence of the county attorney (OAG 61-309). The county attorney is charged with serving as counsel for the fiscal court, and when the court so directs, he is to institute, defend, and conduct all of the county's civil actions before all state courts (KRS 69.210).

#### **Sheriff**

The sheriff, or his deputy, is required to attend all fiscal court sessions. He is required to keep order in the court, and he must obey any orders of the fiscal court (KRS 70.140).

#### **Fiscal Court Clerk**

In all counties except counties containing a city of the first class, the county clerk has the option of serving as the clerk of the fiscal court. If the county clerk declines the position, the fiscal court may select someone to serve as the fiscal court clerk (KRS 67.120). The fiscal court clerk must attend all meetings of the fiscal court and keep an indexed record of its proceedings.



**County Clerk**

Various documents of the fiscal court, such as the minutes of the court and county ordinances, are stored in the office of the county clerk (KRS 67.100).

**County Treasurer**

The county treasurer, selected by the fiscal court under KRS 68.010, receives and disburses money for county government at the order of the fiscal court. At the end of each fiscal year and at other times on the request of the fiscal court, the county treasurer must make reports on the financial condition of the county.



## **CHAPTER III**

### **THE EXECUTIVE AND ADMINISTRATIVE FUNCTION**

Observers of county government have sometimes pointed to the absence of a strong executive officer as a serious defect in the structure of county government.<sup>24</sup> As originally structured, the office of county judge -- the county's closest approximation of an executive officer under the 1891 Constitution -- lacked substantial executive authority and combined duties of a judicial, legislative and executive nature. Prior to 1975, the 1891 Constitution made the county judge the chief judicial officer of the county and quarterly courts. Legislative duties were assigned by Section 144, which made the county judge a member and the presiding officer of the fiscal court. Miscellaneous executive and administrative duties were placed on the office by the General Assembly over the years.

Recent years, however, have been a time of change for the office of the county judge. During this time, the office has lost its judicial functions, while its executive authority has been strengthened. The loss of judicial authority resulted from the 1975 Judicial Amendment to the Constitution (Section 124), which reorganized the state's judicial system. This amendment abolished the county and quarterly courts, eliminating the county judge's judicial responsibilities. Section 124 left other aspects of the office unchanged, expressly providing that, "Nothing...shall be construed to limit the powers otherwise granted by this Constitution to the county judge as the chief executive, administrative and fiscal officer of the county."

Since 1975, legislation passed by the General Assembly has strengthened the administrative and executive powers of the office, although part of this change is largely symbolic. Formal recognition of the county judge's position as the chief executive officer of the county is made in KRS 67.710. Similarly, the title of the office has been amended to county judge/executive, underscoring its new status (KRS 67.700). Other change has been more substantive, outlining specific responsibilities and powers of the office.

#### **General Executive and Administrative Powers**

KRS 67.710 recognizes the county judge/executive as the chief executive of the county. The judge/executive is specifically charged with the execution of all ordinances and resolutions of the fiscal court, all contracts entered into by the fiscal court, and all state laws subject to enforcement by him or by officers under his supervision. He has also been assigned primary responsibility for the administration of county government. In this regard, the judge/executive has the authority to create, abolish, or combine any county departments or agencies and to transfer functions from one agency or department to another. Plans for reorganization, however, must be submitted to the fiscal court (KRS 67.715).

A similar, though less extensive, power over special districts is granted in KRS 67.715. This statute allows the county judge/executive, subject to fiscal court approval, to create special districts, or to combine or abolish any special district created by the fiscal court.

The judge/executive is also responsible for keeping the fiscal court informed of the operations of county departments, boards and commissions (KRS 67.710(3)).

The preparation and periodic review of the county administrative code are sources of additional administrative duties (KRS 67.710(2)). The administrative code is intended to spell out detailed procedures for the administration of county government and must include provisions for personnel administration, fiscal management, purchasing, and the general administration of county government.

Further, as the chief executive of county government, the judge/executive is also required to assure the representation of the county on all boards, commissions, special districts, and multi-county programs in which county participation is called for (KRS 67.715).

The judge/executive has been granted substantial powers of appointment by KRS 67.710. The power of appointment is discussed in greater detail in Chapter VII.

### **Financial Administration**

The judge/executive's responsibilities for the financial administration of county government are

substantial, including initial preparation of the county budget, oversight of county funds, preparation of financial reports to fiscal court and fiscal record keeping.

Each year the county judge/executive prepares a budget proposal for submission to the fiscal court. He must also prepare an estimate of revenues from local, state, and federal sources. Both the budget proposal and the estimate of receipts must be submitted to the fiscal court by May 1 (KRS 68.240).

Following final fiscal court approval of the budget, the judge/executive is responsible for the administration of the provisions of the county budget.

As a part of his responsibility for the county's financial administration, the county judge/executive is required to keep the fiscal court advised of the financial needs and conditions of the county (KRS 67.710(6)). The judge/executive must also see that elected or appointed county officials whose offices use county funds, and all county boards, commissions and special districts submit an annual financial report to the fiscal court (KRS 67.710(4)).

KRS 68.360 more clearly defines the judge/executive's duties for preparing financial reports for the fiscal court. This statute requires the county judge/executive to prepare a quarterly report for submission to the fiscal court, the state local finance officer, and the public, showing detailed information on the condition of each fund of the county budget.



## **CHAPTER IV**

### **TAXATION AND REVENUE**

Kentucky's counties receive revenue from local taxes, state government and the federal government. Table III shows the proportion of county revenue from these sources. This chapter describes the different types of taxes and state and federal assistance to counties.

#### **Taxes Generally**

Counties must levy an ad valorem tax on all property subject to county taxation (KRS 68.090). Most counties raise most of their local tax funds through ad valorem taxes on real and personal property. Those counties which have chosen to impose an occupational license tax usually collect more from that tax than they do from ad valorem taxes. The occupational tax is not suitable for many counties, however, because of commuting out of the county for employment. There are other limited sources of local revenue which the fiscal court may tap, such as license fees and franchise taxes. These are discussed briefly below.

#### **Constitutional Limitations**

The Constitution contains three limitations that apply to all county taxes, regardless of their nature.

**Legislative Authorization.** The Constitution prohibits the General Assembly from levying taxes for the benefit of any county, but allows the legislature to pass general laws granting counties the power to "impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions" (Section 181). Over the years, such grants of taxing power have been made through detailed statutes which delegate the power to levy a specific tax. Where such laws apply, the county must often observe detailed requirements, imposed by statute, on the procedures for levying the tax and the tax rate.

In sharp contrast to previous grants of taxing power, the County Home Rule Act (KRS 67.083) makes a broad delegation of the power of taxation, authorizing the fiscal court to "levy all taxes not in conflict with the Constitution or the statutes of the state now or hereafter

enacted." In striking down a portion of KRS 67.083, which was later amended in response to the Court's objections, the Supreme Court of Kentucky singled out the grant of taxing power as a valid delegation of "the power to impose and collect license, franchise and occupational taxes."<sup>25</sup> Thus KRS 67.083 gives counties more latitude in imposing certain types of taxes. But it is important to emphasize what it does not do. The County Home Rule Statute does not remove restrictions placed on taxation by the Constitution or other statutes. For this reason, a fiscal court should proceed with great care in framing tax levies, to avoid the pitfalls of an invalid tax. Particular care must be exercised in the area of license taxes, lest they be viewed by the courts as excise taxes.<sup>26</sup>

**TABLE III**

**AVERAGE REVENUES FROM LOCAL, STATE AND FEDERAL SOURCES**

**Fiscal Year 1992**

State Shared Revenues

County Population	Local Taxes	Local Misc.	LGEA	Road Fund	Other	Federal Revenues
Less than 10,000	22.38%	10.16%	3.71%	46.70%	12.06%	5.00%
10,000 - 19,999	24.35%	10.41%	7.79%	38.21%	13.71%	5.54%
20,000 - 39,999	30.02%	12.31%	8.01%	27.56%	16.88%	5.22%
40,000 - 74,999	38.73%	15.88%	8.77%	18.07%	15.59%	2.97%
75,000 or More	51.39%	17.96%	1.18%	8.20%	18.24%	3.03%

Source: LRC database on county governments based upon county audits.

**Tax Resolution Must Be Specific.** Every tax resolution passed by the fiscal court must clearly state the distinct purpose of the tax. The Constitution states that no tax levied for one purpose may be used for any other purpose (Section 180).

**Taxes Must Be Sufficient to Pay Debts in a Forty-Year Period.** Whenever any county is authorized to contract an indebtedness, the tax must be set at a rate sufficient to



pay the debt within forty years (Constitution, Section 159).

### **Property Taxes**

The property tax is based on or measured by the value of property as a marketable item. Thus it is known as an ad valorem tax.

County governments in Kentucky traditionally have been dependent upon the property tax for the bulk of local tax revenue. Counties also have served as the basic assessment unit for the rather limited state ad valorem tax and for a large number of local taxing jurisdictions. Although county school taxes are separate taxes, they are levied by the board of education on the basis of state and county assessments. The sheriff collects these taxes. In addition, the sheriff may collect a number of special district taxes.

### **Constitutional Limitations**

The 1891 Constitution categorically states that the tax rate of counties for other than school purposes shall not, at any time, exceed the rate of \$.50 on the \$100 valuation of property (Constitution, Section 157). However, few counties approach the \$.50 Constitutional limit on the tax levy because the compensating and four percent tax rate limits of KRS 68.245 keep the levy well below the Constitutional limit in most counties.<sup>27</sup> However, the use of county-wide special districts often increases the real tax rate by the imposition of special district taxes (See Chapter X on Special Districts).

### **Statutory Limitations**

The 1965 Court of Appeals ruling in Russman v. Lockett directed that real property be assessed at 100% of its real market value, in accordance with Section 172 of the Constitution.<sup>28</sup> Until that time, both real and personal property had been assessed at well below their market value, and counties, as well as other taxing units, had set their tax rates near their constitutional limits. In the face of large increases in assessments, and having no assurance that local tax rates would be reduced, the General Assembly, during the 1965 Special Session, enacted legislation to protect taxpayers from large property tax

increases (Acts 1965, First Extraordinary Session, Chapter 2.) The immediate effect of this legislation was to require local taxing authorities to roll back or reduce their tax rates to a point where they would produce approximately the same amount of revenue as raised the preceding year, exclusive of net assessment growth and any tax levies adopted by the voters. Since 1966 the effect of the rollback law has been to keep tax rates at a fairly constant level. Increases in local government revenue have been limited to new property added to the tax rolls and growth in the assessment of old property due to increases in property values and inflation.

During the mid-1970's, increases in the assessment of real property were sizeable--from 12 to 15% per year. Thus, while the tax rates remained about the same, real property owners received larger tax bills, because of the increase in the value of their property. The 1979 Special Session of the General Assembly sought, through House Bill 44, to give taxpayers some relief from such increases. The relief took the form of retaining the ceiling established by the rollback law--prohibiting a county from realizing more revenue from real property taxes than the preceding year, except through increases in assessments and new property. Below this ceiling the General Assembly placed some additional restrictions on revenue growth from increases in old property assessments. The law required the state local finance office to calculate several different tax rates for each county. One of these rates was simply the current year's tax rate and, under House Bill 44, the current year's rate became the maximum permissible tax rate for the next year. Under no circumstances could a county's tax exceed this limit. A second rate, known as a compensating tax rate, was also calculated. This was a "zero-growth" rate, which, when applied to current assessments of real property that was on the tax rolls the previous year, would produce the same amount of revenue as the previous year. When property values rose, the compensating rate would be lower than the maximum tax rate. The third and last rate that was calculated was called the 4% rate. This rate, when applied to the current year's assessment of real property on the tax books last year, would produce 4% more revenue than the county realized the previous year.

Under the law a county could not, under any circumstances, set a tax rate that exceeded the maximum tax

rate. A county was free to set a tax rate below the maximum tax rate. However, if the rate levied exceeded the compensating rate ("zero-growth" rate), this fact had to be advertised and a public hearing held. Furthermore, if the rate exceeded the 4% rate, the portion exceeding 4% was subject to a recall by the voters, through a petition and referendum process (KRS 68.245 and 132.017).

In the 1990 Session of the General Assembly, all references to the maximum tax rate were deleted from the statutes. Language describing the utilization of the compensating and 4% rates was left intact. The effect of these amendments is that county officials must administer the property tax laws in the manner they have become accustomed to since the passage of HB 44 in 1979, but without the constraint of the maximum tax rate. Thus, in periods of low growth or decline in property values, fiscal courts will be able to realize up to 4% growth in revenues from property on the tax rolls the previous year, and more if the electorate does not challenge the increase through petition and referendum (KRS 68.245, 132.017).

### **Special Districts**

The county tax bill may include ad valorem tax levies for several special districts. Since these special districts are independent of the general purpose county government, their taxes are not included in the calculation of the permissible county tax levy under statutory (KRS 68.245) or constitutional limits (See Chapter X on special districts). Special taxing districts are subject to compensating tax rate limits (KRS 132.023). Table IV lists special districts with the power to levy ad valorem taxes.

### **Service Districts**

Section 172A of the Constitution, adopted by the voters in 1969, permits the General Assembly to provide for reasonable differences in the rate of ad valorem taxation on real property, as long as differences in the tax rate relate to differences in essentially urban services furnished in one or several areas in contrast to other areas of the taxing district. The legislative implementation of Section 172A for counties is KRS 67.650. This statute permits the fiscal court, upon receipt of a petition signed by a majority of the voters living in a particular area, to create a service district and to levy

taxes in accordance with the level and character of services provided.

TABLE IV  
SPECIAL DISTRICTS WITH TAXING POWER

District	Authorizing Statutes
Ambulance Service Districts	108.080 - 108.180
Area Planning Commissions	147.610 - 147.705
Community Improvement Districts	107.310 - 107.500
Drainage, Reclamation and Levee Districts	268.010 - 268.990
Drainage Taxing Districts	269.100 - 269.270
Fire Protection Districts	75.010 - 75.260
Fire Protection Subdistricts	75.015
Flood Control Districts	104.450 - 104.680
Hospital Districts	216.310 - 216.360
Levee Districts	266.010 - 266.990
Library Districts:	
Formed by referendum	173.450 - 173.650
Formed by petition	173.710 - 173.800
Local Air Boards	183.132 - 183.160
Local Tourist and Convention Commission	91A.350-91A.390
Mental Health-Retardation Districts	
	210.370 - 210.480
Public Health Districts	212.720 - 212.760
Rescue Squad Taxing Districts	39.700 - 39.780
Riverport Authority	65.510 - 65.650
Sanitation Districts and Subdistricts	
	220.010 - 220.613
Sanitation Tax Districts	76.274 - 76.279
Solid Waste Management Districts	109.001 - 109.320*
Subdivision Road Districts	179.700 - 179.735
Watershed Conservancy Districts	262.700 - 262.990

\*A county may also create a nontaxing solid waste district (KRS 109.041).

### Property Subject to Taxation

County property taxes are levied on two types of property: (1) real property, such as land, buildings, and other improvements of a personal nature, and tangible personal property, such as automobiles; and (2) such products as crude oil, tobacco, and other farm products in storage.

**Real and Personal.** All real and personal property actually located within the state, including property of nonresidents and corporations doing business in the state, is subject to the county ad valorem property tax at rates set by the fiscal court, plus any additional levies (KRS 132.190). Agricultural and horticultural land is assessed for ad valorem tax purposes according to its value for agricultural and horticultural use (Constitution, Section 172A). Persons sixty-five and older pay ad valorem taxes

only on that portion of their homestead's assessed valuation in excess of \$21,800 (indexed the first quarter of every odd year to the cost of living), except for assessments for special benefits (Constitution, Section 170).

**Bank Shares.** Before 1996 KY Acts Chapter 254 (HB 416 sec. 39) repealed KRS 136.270, that section allowed local governments to impose a bank shares tax on banks not organized under KRS 287.135. The same bill that repealed KRS 136.270 also implemented a new funding source to replace the bank shares tax called a "local bank franchise tax."

**Local Bank Franchise Tax.** House Bill 416 (17) allows counties, cities, and urban-county governments to impose a franchise tax on financial institutions measured by the deposits in each institution located within the jurisdictional boundaries of each government not to exceed .025% of the deposits. Urban counties are limited to .05% of the deposits. This tax is cumulative in that a bank located in a city may be charged .025% by the city itself, and may be charged .025% by the county also.

Each financial institution files with the Revenue Cabinet reports which record all deposits located within the Commonwealth and the most recent summary of deposits filed with the Federal Deposit Insurance Corporation. The cabinet reviews and then certifies to the local government imposing the local bank franchise tax the amount of deposits and the amount of tax due the local government. The local government issues bills to each financial institution by December 1 for payment no later than January 31 of the following year. A different schedule was allowed for the first year of implementation.

**Public Service Corporations.** All public carriers and utility companies, such as railroads, gas, water and electric companies, and pipelines, must pay taxes to the county in which their operating property is located. The assessment of these taxes is performed for the counties by the Kentucky Revenue Cabinet. Bus lines, common carrier truck companies and taxicab companies are exempted from this tax (KRS 136.120). The Cabinet informs the county of the assessed value of operating property owned by a particular company and the county applies its ad valorem tax rate and bills the main office of the company.

Watercraft involved in interstate commerce on Kentucky waterways are similarly assessed for local purposes by the Revenue Cabinet and the total assessment is prorated among the various local governments, to be separately taxed by them. (KRS 136.181).

**Life Insurance Capital.** The county in which the principal office of a domestic life insurance company is located may impose a tax of 15 cents on each \$100 of "taxable capital," as determined by the Revenue Cabinet (KRS 136.320).

**Distilled Spirits.** Distilled spirits stored in bonded warehouses are taxable by the county, subject to the constitutional limit of 50¢ per \$100, plus any additional voted tax levies. The stored spirits are assessed as of January 1 of each year by the Revenue Cabinet and the tax is due and payable the following September 15 (KRS 132.160).

**Agricultural Products.** Counties may impose an ad valorem tax not exceeding 1 1/2¢ on each \$100 of the fair cash value of all unmanufactured tobacco and not exceeding 4 1/2¢ on each \$100 of the fair cash value of all other unmanufactured agricultural products, excluding livestock and domestic fowls, that are not actually on hand at manufacturing plants, nor in the hands of the producer or agents to whom the products have been conveyed or assigned for the purpose of sale (KRS 132.200). Consult KRS 132.200 for a complete list of exemptions.

**Unmined Minerals.** From 1976 until 1992, the Kentucky Revised Statutes contained sections purporting to tax unmined coal at a rate different from the rate on other real property and to exempt unmined coal from local taxes. These provisions were ruled unconstitutional in *Gillis v. Yount* (Ky., 748 S.W. 2d 357) and later cases, and they have not been enforced since 1988. The 1992 General Assembly removed these provisions from the statutes. Unmined coal is now subject to local taxes, and it is to be taxed at the same rate as other real property. It should be assessed at 100 percent of real value, and the county's real property rate should be applied to that assessment. Assessments are based on information returned by property owners (KRS 132.820). The Revenue Cabinet monitors self-reporting by property owners, using geographic information system

methodology and comparisons with Mines and Minerals data on mining and extractions.

**TABLE V**  
**OPTIONAL AD VALOREM TAXES BY THE FISCAL COURT**

Purpose	KRS Citation	Maximum Statutory Amount per \$100*
1. Riverport Authority	65.580	Indefinite
2. Courthouse Care and Maintenance	67.140	Indefinite
3. Urban Renewal Agency	99.400	Indefinite
4. Community Improvement Districts in Counties containing Cities of the 1st through 4th Class	107.350	10 cents
5. Local Air Board	183.134	Indefinite
6. Regional Mental Health Program	210.460	Indefinite
7. County Health Department	212.040	Sufficient
8. District Health Department	212.910	Sufficient
9. Joint City-County Health Department in 2nd Class Cities	212.650	Sufficient
10. Drainage Bonds	269.080	2% of value of tax-able property for state <u>purposes*</u>

\* Subject to statutory tax rate limitations, KRS 68.245, and Section 157 of the Constitution, which establishes a maximum rate of 50¢ per \$100 for counties and special districts.

NOTE: 1996 HB 819 (96 Acts Ch. 280) repealed KRS 66.030 and 66.130--Public Building Bonds and County Justice District Funding and Refunding Bonds.



## **Assessment**

The procedure and mechanics of the assessment of property are the responsibility of the property valuation administrator, an official elected on a county basis but classified as a state official and subject to the supervision of the Revenue Cabinet (KRS 132.370, 131.140).

The property valuation administrator is required to revalue each parcel of taxable real property subject to assessment each year, and he must physically examine the parcels no less than once every four years (KRS 132.690).

A three-member board of assessment appeals reviews objections to assessed value (KRS 133.020), but before making an appeal to the board of assessment appeals, the taxpayer must request a conference with the property valuation administrator or his designated deputy (KRS 133.120). This conference may be held by telephone at the request of the taxpayer. The property valuation administrator and the taxpayer may agree to changes in the assessment at this conference.

KRS 132.190 contains a general survey of assessment procedures. It is important to note that Section 172 of the Constitution and KRS 132.190 require all property to be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale.

When the Revenue Cabinet has completed an equalization of the assessment of the property in any county, the results are presented to the fiscal court. The fiscal court may ask for a review of the equalization by directing the county attorney to prosecute an appeal to the Kentucky Board of Tax Appeals (KRS 133.170).

The fiscal court also has some administrative and fiscal responsibilities relating to assessments. Each county fiscal court must annually appropriate and pay to the state treasury an amount limited by KRS 132.590 for compensation of deputies and assistants. The remainder of the county appropriation must be paid to the office of the property valuation administrator on a quarterly basis. In addition, the fiscal court must also provide the county property valuation administrator with a suitable office room or rooms in the county courthouse or some other

suitable building, as well as suitable furniture (KRS 132.410).

The real property tax roll is open for inspection in the property valuation administrator's office. The property valuation administrator must publish the time of the inspection period. The cost of the notice is paid by the fiscal court out of the county treasury (KRS 133.045).

The property valuation administrator is also responsible for assessing motor vehicles, other than those assessed under KRS Chapter 136 as part of public service companies. In this role, the property valuation administrator is subject to the supervision of the Revenue Cabinet, which may provide standard valuation for the valuation of motor vehicles (KRS 132.487).

## **Property Assessment and Reassessment Moratoriums**

A county may establish by ordinance a program granting property assessment or reassessment moratoriums for existing residential properties or commercial facilities, in order to encourage their repair, rehabilitation, restoration, or the stabilization of existing improvements.

The moratorium for each piece of certified property may not exceed five years (KRS 99.600).

## **Tax Collection**

### **Real Property Taxes**

The collection of real property taxes is primarily the function of the county sheriff, but the statutes spell out supervisory functions for the fiscal court. The fiscal court must designate the county treasurer or some other official to receive the taxes collected by the sheriff each month (KRS 134.300). At the appointed time, the sheriff turns over all taxes collected by him in the preceding month. If the sheriff does not make his monthly settlement at the appointed time, the fiscal court may impose financial penalties, but the county judge/executive may grant a brief extension of the deadline (KRS 134.300).

At the regular October term of the fiscal court, the court must appoint some competent person other than the commonwealth or county attorney to make an overall settlement of the sheriff's accounts. The settlement must show the amount of ad valorem tax collected, and an itemized statement of the money disbursed. The settlement is very important, because the sheriff may not receive his tax books or bills the following May unless he possesses a writ of quietus from the fiscal court and the Revenue Cabinet showing that he has fulfilled his tax-collecting obligation for the previous year (KRS 134.330).

At the same time, in counties of less than 70,000 population, the sheriff is required to pay annually to the fiscal court any fees, commissions or income which exceed the sum of his maximum constitutional salary and reasonable expenses (KRS 134.310). In counties of 70,000 or more, in which the sheriff sends all fees to the state treasury, this settlement for excess fees is not made until the end of the sheriff's term (KRS 64.350).

Special procedures are set forth by the statutes regarding uncollectible delinquent taxes. In order for the sheriff to be given credit for the taxes, he must file a list of uncollectible delinquent taxes (KRS 134.360). The sheriff then surrenders to the fiscal court all the delinquent tax bills on tangible personal property, but not on delinquent ad valorem taxes. These become certificates of delinquency when sold by the sheriff pursuant to KRS 134.440 and 134.450. The Revenue Cabinet is responsible for the collection of certificates of delinquency and delinquent personal property tax bills, but the cabinet must first offer the collection duties to the county attorney. If the county attorney wants to collect the delinquent taxes, he must contract with the Revenue Cabinet on an annual basis (KRS 134.500). To aid collection of the overdue taxes, the names of delinquent taxpayers must be published in a county newspaper (KRS 134.440 and 424.330).

### **Motor Vehicle Taxes**

The county clerk is the collector of all state, county, city, urban-county, school and special taxing district ad valorem taxes on motor vehicles registered by him (KRS 134.800). These taxes are due on or before the earlier of the last day of the month in which the motor vehicle registration is renewed or the last day of the month in which a vehicle is transferred (KRS 134.810). A determination of delinquency shall be placed upon late taxes due with a penalty of a percent charge added to the tax due. This varies from 3% to 15%, depending on the amount of time the tax is delinquent. If the tax is paid within five days of being declared delinquent, the usual 3% charge, if delinquent, but paid within 30 days, is waived (KRS 134.810). The clerk receives four percent commission for collecting motor vehicle taxes (KRS 134.805) and must report the taxes collected for the preceding month, minus the commission, to the taxing district by the tenth of each month (KRS 134.815).

### **Commercial Fees and Taxes**

Pursuant to Section 181 of the Constitution and KRS 67.083, the General Assembly may authorize counties to levy a variety of business and commercial license fees or taxes.

### **Commercial License Fees**

The fiscal court of any county in the state may impose several commercial license fees. These fees, listed in Table VI, range from a \$5 annual license for establishments selling ice cream or soft drinks to an annual pool table fee of \$30. The fees are to be collected by the county clerk; for these labors, the fiscal court may allow the clerk a commission of up to 5% of the gross amount collected, in addition to the \$5.00 fee provided for issuing a license in KRS 64.012 (KRS 137.115).

**TABLE VI  
FISCAL COURT LICENSE FEES**

<b>Type of Business</b>	<b>Annual Limit</b>
Restaurant	\$10
Ice Cream or Soft Drinks	\$ 5
Ice Cream and Soft Drinks	\$10
Retail Tobacco Sales	\$10
Commercial Billiard or Pool Table or Bowling Alley	\$30 per yr. first table or alley, \$ 5 per yr. each additional table or alley

NOTE: KRS 137.115, Fiscal Court License Fees

## Alcoholic Beverage License Fees

The fiscal court of each county in which the sale of alcoholic beverages is not prohibited by local option (KRS Chapter 242) may impose license fees for the privilege of selling alcoholic beverages. Only such licenses as correspond, in their provisions and the business authorized, to those for distilled spirits and wine retail package licenses, distilled spirits and wine retail drink licenses, restaurant wine licenses and malt beverage retailers licenses may be issued. The license fee shall not exceed twice the amount of the fees imposed in KRS 243.030 and 243.040 for such licenses, except that the fee for a Sunday distilled spirits and wine retail drink license must not exceed \$300. Any amount paid to any city within the county as a license fee for the same privilege for the same year may be credited against the county license tax (KRS 243.060). Table VII lists the various county alcoholic beverage license fees.

**TABLE VII  
COUNTY ALCOHOLIC BEVERAGE LICENSE FEES**

License	Annual Limit
1. Retail package licenses, per annum	
(a) In counties containing cities of the first class	\$1,200.00
(b) In counties containing cities of the second class	\$1,000.00
(c) In counties containing cities of the third class	\$ 800.00
(d) In counties containing cities of the fourth class	\$ 600.00
(e) In all other counties	\$ 400.00
2. Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum	
(a) In counties containing cities of the first class	\$1,600.00

(b)	In counties containing cities of the second class	\$1,000.00
(c)	In counties containing cities of the third class	\$ 800.00
(d)	In counties containing cities of the fourth class	\$ 600.00

3.	Special temporary liquor license, per event	
	(a) In counties containing cities of the first class	\$ 266.66
	(b) In counties containing cities of the second class	\$ 166.66
	(c) In counties containing cities of the third class	\$ 133.34
	(d) In counties containing cities of the fourth class	\$ 100.00
4.	Restaurant wine license, per annum	
	(a) New applicants	\$ 600.00
	(b) Applicants for Renewal	\$ 400.00
5.	Special temporary wine license, per event	\$ 50.00
6.	Special private club license, per annum	\$ 300.00
7.	Special Sunday retail drink license, per annum	\$ 300.00
8.	Retail malt beverage license, per annum	
	(a) New applicants	\$ 400.00
	(b) Applicants for renewal	\$ 150.00
9.	Special temporary malt beverage license, per event	\$ 25.00

---

NOTE: KRS 243.030 - Distilled spirits and wine license fees. KRS 243.040 - Malt beverage license fees.

**Off-Site Waste Management Facility or  
Solid Waste Landfill License Fee**

The fiscal court of any county or the urban-county council of any urban-county may license off-site waste management facilities or solid waste landfills located within the county. The license fee for an off-site waste



management facility must not exceed two percent per annum of the gross receipts of a facility owned or operated by self-employed individuals, partnerships or corporations. The license fee for a solid waste landfill may be no less than one cent nor more than fifty cents per ton of waste, or it may be set at up to five percent of gross receipts. The license fee for a solid waste landfill may be increased by up to twenty-five percent for waste received from outside the solid waste planning area. Ten percent of the license fee must be remitted annually in equal shares to all counties in the planning area served by the landfill, for use in solid waste planning and plan implementation.

In the case of hazardous waste facilities involving land disposal, an annual license fee of up to five percent of gross receipts may be levied (KRS 68.178).

### **Mineral Resource Production License Fees**

The fiscal court of any county may impose license fees on the production of mineral resources (KRS 67.083), except for coal, which is specifically excluded (KRS 143.100).

### **Occupational License Taxes**

The authority to levy an occupational license tax is granted to all counties by KRS 67.083. However, a more specific set of statutory instructions applies to the procedures for imposing occupational license taxes in counties with a population of more than 300,000 (KRS 68.180) and in counties with a population between 30,000 and 300,000 (KRS 68.197). During fiscal year 1996, 43 counties imposed an occupational license tax.

The fiscal court of each county having a population of at least 300,000 (Jefferson) may impose license fees on franchises, provide for licensing any business, trade, occupation or profession, or the using, holding, or exhibiting of any animal, article or any other thing. License fees on such a business, trade, occupation or profession, except for common schools, may not exceed 1 1/4% of: (a) salaries, wages, commissions and other compensation earned by all persons in the county, or (b) the net profits of businesses, trades, professions or occupations conducted in the county. If the county imposes licenses for regulatory purposes, the fees are not governed

by the 1 1/4% rule. No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax may be imposed upon or collected from any bank; trust company; combined bank and trust company; combined trust, banking and title business; or savings and loan association; nor on income received for Kentucky National Guard duty; or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections; nor in other cases where the county is prohibited by law from imposing a license tax (KRS 68.180).

Counties with a population between 30,000 and 300,000 may impose a license fee on a business, trade, occupation or profession at a rate not to exceed one per cent of salaries, wages or net profits. In lieu of a percentage fee, an annual fixed amount fee may be set. Licenses imposed for regulatory purposes are not subject to limitations as to form and amount. No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax shall be imposed upon any insurance company (except as provided in KRS 91A.080), bank, trust company, combined bank and trust company, combined trust, banking and title business or any savings and loan association. In addition, income received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training and income received by precinct workers in election related duties are exempted from license fees (KRS 68.197).

Persons who pay a license fee to a city within a county that imposes a license fee under KRS 68.197 may, upon agreement between the city and county, credit the city tax against the county tax. License fees imposed by a county on or after July 15, 1986 are automatically subject to a credit of the city license tax against the county license fee (KRS 68.197).

Coal severance, processing, sale, use, transportation, and other handling are specifically exempted from the counties' power to levy occupational, license, or other taxes (KRS 143.100).

Counties, under the provisions of KRS 91A.080, may impose a license tax specifically on insurance companies. This statute provides for the insurance company to collect

the tax and remit it to the county for a fee of not more than fifteen percent of the tax collected or two percent of the premiums subject to the tax, whichever is less. The county may not impose this tax upon the premiums received on policies issued to public service companies which pay ad valorem taxes. An insurance company which also pays a license tax to a city receives a credit of the city tax against the county tax, if the county tax was levied on or after July 13, 1990 (KRS 91A.080).

### **Forestry Tax**

All counties receiving state forest fire protection and all counties which have received notice of the intended establishment of state protection must pay annually to the Natural Resources and Environmental Protection Cabinet a sum equal to two cents per acre of privately owned timberlands. Payments are due on September 15 following the assessment. The county may meet its obligation out of its general funds, or may require each owner of timberland to pay an annual assessment of not more than three cents per acre (KRS 149.540).

### **Real Estate Transfer Tax**

The county clerk of each county collects a tax of 50 cents for each \$500 of value declared in a deed when title to real property is transferred. The clerk is authorized to retain 5 percent of the tax as a fee for collections; the balance is remitted every three months to the county treasurer (KRS 142.050).

### **Voted Levies of Special Taxes**

Upon approval of its voters, a county may raise revenue for public service programs through ad valorem taxes and occupational license taxes (KRS 68.520). The revenue may be used to fund health programs, public protection, and similar services, but may not be used to acquire facilities of a capital nature. The money must be devoted solely to the public service program for which the tax was approved. KRS 68.540 states that these voted taxes are "in addition to all other taxes otherwise authorized and provided by law." Nevertheless, there are limits on the amount that may be charged. No ad valorem tax may increase a county's aggregate taxes beyond the maximum prescribed by Section 157 of the Constitution. KRS 68.520

limits voted occupational license taxes for public service programs to one-half of one percent of compensation and business profits earned within the county. The profits of public service companies, banks, and trust companies are not considered in this calculation.

In 1988, the Kentucky legislature enacted a statute giving cities the power to fund specified projects and services with special ad valorem taxes. In 1990, that statute was re-enacted in a new version giving counties the same power. A county's voters must approve the ordinance establishing such a tax. The statute says, "The revenues generated shall be in addition to other taxes and used solely for the specified project, program, or service as designated by the ordinance enacting the tax" (KRS 65.125). As with any county ad valorem tax, the limits of Section 157 of the Constitution must be observed.

#### **Payments in Lieu of Taxes**

A county may receive payments in lieu of taxes from public corporations, local authorities and utilities which have offices or installations in the county. The Churchill Downs Authority is required to pay to Jefferson County an amount equal to the property taxes it would have paid under private ownership (KRS 58.580). A municipal electric plant board, operating under KRS 96.550 to 96.900, is required to pay the county annually a tax equivalent derived by formula (KRS 96.820). Local housing authorities (KRS 80.190) and the Kentucky Housing Corporation (KRS 198A.200) are permitted to make payments in lieu of taxes to counties within which their projects are located, outside a city's limits. Industrial firms whose plants have been financed by county industrial revenue bonds may agree to a negotiated payment in lieu of taxes.

#### **Nontax Revenue**

All counties receive significant amounts of revenue from sources other than taxation. These revenue sources consist of United States Government grants, state financial assistance, and revenue earned by various county activities.

#### **Federal Government Aid**

**U.S. Forestry Service Timber Revenue Refund.** Revenue received by the United States Forestry Service from the sale of timber in the Daniel Boone National Forest and that part of the Jefferson National Forest which lies in Kentucky is paid to the Finance Cabinet, which apportions the money among the counties according to the area of the forest in each county. One-half of the funds must be credited to the county public road fund and the other half distributed among the school districts in the county, according to the area of the forest in each district (KRS 149.130). This transfer is intended to compensate the counties for the loss of property tax revenue due to federal ownership of large tracts of land.

**TVA "In Lieu" Payments.** The Tennessee Valley Authority makes payments to the state in lieu of property taxes. Seventy percent of the payment is redistributed to local governments in the TVA area on the basis of the taxes that would be paid if the property were taxable (KRS 96.895).

**Federal Block Grants.** The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) consolidated many grant-in-aid domestic assistance programs into broad, functional block grants. Primary responsibility for administration of these grants has been given to the states. Rules governing the use of these funds provide maximum flexibility to the state and beneficiaries.

How do county officials access block grant moneys? What type of programs or services may be funded with block grant dollars, and which state agency administers block grant funds? To get answers to these and similar questions, county officials should first contact the office of the area development district to which their county belongs. Once the problem has been defined, and the funding source, if any, identified, the county officials may proceed to contact the appropriate state administering agency for further information and assistance. If the area development district personnel can not help, county officials should contact the Kentucky Department for Local Government. Department personnel are trained to identify available funding sources and direct funding questions to the proper authorities, whether they relate to block grants or formula grants-in-aid programs.

#### **State Government Aid**

The state returns to counties a substantial portion of severance tax receipts to compensate for the extraction of non-renewable wealth, as well as the deterioration of roads used to transport minerals to a terminal or marketplace. The state also shares motor vehicle and special fuels taxes with the counties. Portions of certain state taxes and license fees collected by county governments are returned to counties, and grants for specific projects are available to qualifying counties.

**Local Government Economic Assistance Program.** The Local Government Economic Assistance program consists of a system of grants to local governments to improve the environment for new industry and the quality of life for the residents. The sources of funds for the grants are:

(1) 1/2 the tax collected annually on all minerals, except coal (KRS 42.450), plus

(2) Twelve percent of the coal severance and processing taxes collected annually (KRS 42.4585).

Seventy percent of these funds are allocated to counties according to a detailed formula (KRS 42.470) and must be spent within certain priority categories. Counties may not use this money for financial administration (KRS 42.455). One grant available to counties is the "job development incentive grant." It is for the encouragement of job development for industrial development projects which:

(1) Have made at least the minimum investment required;

(2) Have created at least 25 new jobs;

(3) Pay each employee no less than the equivalent of 130% of the federal minimum wage; and

(4) Pay the average salary no less than the equivalent of 150% of the federal minimum wage (KRS 42.4588).

**Local Government Economic Development Fund.** In 1992, the General Assembly created the Local Government Economic Development Fund to promote industrial development in coal-producing counties. Each year, a percentage of the state's

total revenue from the coal severance tax is put into this fund. Since, 1995, the fund has been receiving 38 percent of coal severance tax revenues.

The money in the fund is distributed to coal-producing counties for industrial development projects, as determined by a three-part formula. One-third is granted to each coal-producing county on the basis of the five-year average ratio of total severance tax collected in each coal-producing county to the total tax collected statewide. One-third is granted to each coal-producing county on the basis of the percentage of mining employment in the county, percentage of earnings from mining, and the surplus labor rate. The final third will be reserved for industrial development projects benefiting two or more coal-producing counties.

The existence of this fund does not affect the Local Government Economic Assistance program, which continues to receive twelve percent of the revenue from the coal severance tax (KRS 42.4582-42.4595).

**Local Match Participation Program.** If funds are appropriated by the General Assembly, the Department for Local Government is to administer and disburse those funds for matching any projects a local government may be undertaking in conjunction with the United States Army Corps of Engineers, the Federal Emergency Management Agency, and any other flood-related federal government grant and loan program which would require local matching funds, or for flood control planning and mitigation activities (KRS 147A.029).

#### **County Road Fund Aid**

Section 157A of the Kentucky Constitution authorizes state aid to counties for the building, repair and maintenance of public roads.

**Coal Haul Roads.** Thirty percent of the Local Government Economic Assistance fund is required to be spent by the state on coal haul roads (KRS 42.455). The 70 percent balance is allocated to counties according to a formula (KRS 42.470) and counties may use some or all of these funds to build, repair or maintain county roads (KRS 42.455).

**Road and Bridge Aid.** The state Department for Local Government allocates to the counties (KRS 179.410) 18.3 percent of the revenue derived from motor and special fuels taxes for the construction, reconstruction and maintenance of county roads and bridges (KRS 177.320). The allocation formula is set out in KRS 177.360. The department also pays, pursuant to KRS 177.369, counties containing unincorporated urban places a share of municipal aid funds allocated pursuant to KRS 177.366.

**Rural and Secondary Roads.** The state Transportation Cabinet allocates (KRS 177.360) to counties 22.2 percent of the revenue derived from the 9 percent motor and special fuels taxes for the construction, reconstruction and maintenance of secondary and rural roads (KRS 177.320).

**Motor Truck Registration Fees.** Thirty percent of all revenue raised by the registration fees imposed on certain motor vehicles by KRS 186.050 is evenly distributed among all the counties for the county road funds (KRS 47.020). This money is intended to partially reimburse counties for road damage caused by heavy trucks.

**Motor Vehicle Operator's Licenses.** The road fund of each county receives 50 cents from the fee for each four-year original or renewal operator's license issued in the county (KRS 186.535).

#### **County General Fund Aid**

All shared revenues not expressly designated for the road fund or the Local Government Economic Assistance fund go into the county general fund, which underwrites the county government's operations.

**Dog Licenses.** As a means of providing a portion of the funds for setting up and operating dog pounds, 50 cents from the dog license fee is credited to a special enforcement fund by the state Department of Agriculture. Each county receives a portion of this fund, based upon the licenses sold in the county, and is required to use it in meeting the expenses of the dog warden and pound operation (KRS 258.195).

**Legal Processes and Instruments Tax.** Twelve and one-half percent of the revenue derived from taxes on marriage licenses, powers of attorney to convey real or personal



property, and liens or conveyances of coal, oil, gas or other mineral rights (KRS 142.010) is returned to the county in which the tax was paid (KRS 47.110).

**Court Revenue Reimbursement.** Prior to the implementation of the uniform state court system in 1978, justices', quarterly and county courts were maintained by county governments. In some instances, the moneys collected from forfeitures, fines and court costs exceeded the expense of operating the courts, thus producing revenue for county government. After the unified court system was established, all court revenues began to flow into the state treasury. A formula was established to reimburse counties that had lost this revenue. The Finance and Administration Cabinet computes the amounts to reimburse each county using data on past court revenues and costs. Reimbursement payments are made quarterly and remain the same from year to year (KRS 24A.190 - 24A.193 and 109 KAR 11:010).

**Volunteer Fire Department Aid.** The Commission on Fire Protection Personnel Standards and Education annually allots \$5000 to each qualified volunteer fire department. The qualification of a department is based on the number of firefighters, amount of equipment, housing facilities, and other matters. A qualifying department must have at least twelve firefighters, a chief, and one fire apparatus, and the firefighters must meet certain training requirements. If a qualifying department does not participate in the Kentucky fire incident reporting system set up by KRS 304.13-380, it forfeits \$500 of its annual allotment.

The yearly stipend of \$5,000 was increased to \$6,500 in 1998 and will again be raised, to \$7,500, beginning July 1, 1999, for each qualifying department. This stipend is funded through the Firefighters Foundation Program, which receives part of the proceeds from the insurance premium surcharge imposed by KRS 136.392. The surcharge before 1992 was 1.5% of premiums, assessments and other charges collected by insurance companies, other than life and health insurance companies, for risks located in Kentucky. Since 1992, KRS 136.392(1)(b) has stated that the surcharge "shall be adjusted by the secretary of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund...and the Law Enforcement Foundation Program fund...." A portion of the funds in the Firefighters Foundation Program is

withheld to purchase group or blanket health insurance and workers' compensation insurance, and to reimburse volunteer fire departments for replacement of equipment lost or damaged due to hazardous material incidents. A part of the funds also goes to pay for the inoculation of all paid and volunteer firefighters in Kentucky against hepatitis B.

In each year from 1992 through 2001, \$1,000,000 is allotted out of the Firefighters Foundation Program to a revolving low-interest loan fund which helps volunteer fire departments with major equipment purchases and facility construction. The Commission on Fire Protection Personnel Standards and Education lends this money to qualifying departments at interest rates of three percent or less. After the year 2001, this revolving loan fund is required to be self-sufficient, deriving its operating revenues solely from principal and interest payments (KRS 95A.262).

**Firefighter Incentive Pay.** A county may qualify its paid firefighters for a \$2,750 salary supplement from the Firefighters Foundation Program fund by satisfying the salary, educational and training requirements of KRS 95A.230. After July 1, 1999, that amount will be increased to \$3,000. The county is paid the supplement for each qualifying professional firefighter, plus the amount necessary to pay the employer's contribution on the supplement to the County Employees Retirement System. The amount equal to the required employer's contribution may also be paid into a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954, as amended, if the employer's contribution does not exceed that amount which is required of employers under the CERS pursuant to KRS Chapter 78. The county must pay the entire amount of the supplement to the qualifying firefighter. The supplement must not be used to supplant existing salaries nor to substitute for normal periodic salary increases (KRS 95A.250, 95A.260).

**Police Incentive Pay.** Any county which qualifies its police officers by meeting the salary, educational and training requirements of KRS 15.440 may participate in the Law Enforcement Foundation Program fund. A participating county will receive an annual salary supplement of \$2,750 from the fund for each qualified police officer it employs. After July 1, that amount will be increased to \$3,000. The county must in turn pay the supplement to the qualifying officer. As with the Firefighters Foundation Program fund,

the supplement must not be used to supplant existing salaries, nor to substitute for normal periodic salary increases. In addition to the salary supplement for the officer, the county will receive the funds necessary to pay the employer contribution to the County Employees Retirement System to cover increased pension costs resulting from the supplement (KRS 15.460, 15.470). The Law Enforcement Foundation Program Fund is derived from the same insurance premium surcharge that supports the Firefighters Foundation Program fund (KRS 136.392).

**Sheriff and Deputy Incentive Pay.** Sheriffs and their deputies are able to participate in the incentive pay program. Sheriffs and their deputies who qualify shall receive the same allotment of \$2,750 per year, with the same stipulations and requirements placed upon firefighters and police in this program. Their allotments will be increased to \$3,000 per year after July 1, 1999. Due to constitutional restrictions, a sheriff may only receive the allotment if he or she makes less than the maximum salary allowed a sheriff under Constitution Section 246. Once this maximum is reached, no more payments shall be made to the sheriff until the next year. The sheriff is subject to various additional reporting requirements to assure that the maximum salary level will not be exceeded.

**Surface Coal Mining Permit Fee Refunds.** On or before August 1st of each year, the state treasurer transfers one-third of all funds paid during the preceding fiscal year for surface coal mining permits to the fiscal courts of the counties in which the permitted operations are located, for the general purposes of the fiscal courts (KRS 350.139).

**Election Expense Refund.** The cost of all elections held in any county must be paid within 60 days after the election by the county treasurer, upon authorization by the fiscal court. Within 90 days after the election, the county treasurer must certify the amount of expenses, date, kind of election and the number of precincts in the county to the state Board of Elections. The state Board of Elections, upon satisfaction that the account is correct, authorizes payment of \$255.00 for each precinct in the county to the county treasurer. The state Board of Elections will not authorize payment for any precinct containing fewer than 350 registered voters, unless the county has received prior approval for the precinct. The state board also requires that the county maintain a

contract with the State Property and Buildings Commission for the use of voting machines, and that the county provide training to precinct election officers (KRS 117.345).

**Parks Establishment Aid.** The state Department for Local Government may make grants to local governments of up to \$500,000, not to exceed 50 percent of the cost of the project, for the purpose of establishing local parks and recreational facilities. (KRS 147A.028).

**Community Flood Damage Abatement Program.** The state Natural Resources and Environmental Protection Cabinet may provide funds and technical assistance to local governments to initiate flood control projects and programs (KRS 151.550).

**Wastewater Treatment Assistance.** The Kentucky Infrastructure Authority is authorized to make grants to any governmental agency to assist in the construction of wastewater treatment works (KRS 224A.040). Counties are also eligible to receive infrastructure loans, and to enter into assistance agreements with the Authority (KRS 224A.080).

**Jail Construction and Repair Assistance.** The state Local Correctional Facilities Construction Authority is authorized to enter into lease agreements with counties for the construction, reconstruction, improvement or repair of jails and appurtenant facilities. The authority may pay no more than 90 percent of the cost of the project and becomes the owner of the facility during the retirement of the debt. The deed reverts to the county when the debt is paid. The lease which the authority enters into with the county may be drawn with terms which reflect the county's ability to pay (KRS 441.605 - 441.990).

### **General Government Operations Revenues**

The general operations of county government bring in additional county funds. While county operations usually are not carried out with an express intention of earning revenue, revenue is often an important by-product.

**Excess Fees.** Section 106 of the Kentucky Constitution and various statutes authorize county officials to collect fees for the performance of certain duties. Fees collected pursuant to the various statutes represent charges which

the county makes for services rendered through its officers, and constitutes a fund subject to control by the county.<sup>29</sup> Fees are not the personal property of the given official.

This section of the Constitution divides counties into two classifications for the purpose of compensating county clerks, sheriffs and their deputies: (a) counties of 75,000 or more population, and (b) counties of less than 75,000 population. The population figure of 75,000 has been reduced by statute to 70,000 (KRS 64.350).

In counties of 70,000 or more population all fees collected by county clerks, sheriffs and their deputies are paid directly into the state treasury. In return, the salaries and office expenses of the officers and their deputies are paid out of the state treasury. The total amount paid the officers in salaries and office expenses may not exceed 75 percent of the fees collected by the officer. The other 25 percent is paid by the state to the fiscal courts or urban-county governments of the counties on April 15, July 15, October 15 and January 15 for the preceding three months' collections; any adjustments necessary to make the four quarters equal 25 percent of the fees collected by the office holder are made in the January 15 payment (KRS 64.350).

In counties of less than 70,000 population the officer may receive the maximum compensation established by the Constitution and by statute, plus office expenses, including compensation of deputies and assistants (Constitution, Section 246, and KRS 64.152 and 134.310). Any revenue derived from fees in excess of the officer's compensation and expenses is transferred to the county (KRS 64.152 and 134.310).

County clerks and sheriffs are authorized to invest funds temporarily in excess of operating needs in specified financial instruments and institutions. County officials must report these earnings at the time of their annual reports and settlements with the fiscal court for excess income of their offices (KRS 66.480).

**Property Income.** The rental or sale of county-owned real property is a relatively minor source of county revenue. The general authority of the fiscal court to sell and convey real estate of the county is contained in KRS

67.080, which provides that the fiscal court may directly sell and convey any real estate belonging to the county, or the fiscal court may appoint one or more commissioners to sell the property, subject to the approval of the fiscal court.

**Court Space Rental.** KRS 26A.100 requires that circuit and district courts be held in the county courthouse of each county unless otherwise ordered by the Kentucky Supreme Court. For the use of this court space, the fiscal court is paid an operating costs allowance and a use allowance, which are determined by formula (KRS 26A.115).

**Proprietary Income.** KRS 67.083 authorizes counties to provide facilities and services which could generate income in excess of costs. These include water, sewage, garbage disposal, recreation, ambulance and transportation facilities and services.

**Interest Income.** The fiscal court may invest and reinvest money subject to its control and jurisdiction in specified financial instruments and institutions. The fiscal court may delegate the investment authority to the county treasurer or another officer who handles county money. The state local debt officer is directed to assist counties by explaining investment opportunities and providing technical assistance (KRS 66.480).

**Tax Penalties.** The fiscal court realizes some additional income from tax penalties. With few exceptions, county taxes are due and payable on September 15. They become delinquent on January 1st and are subject to a 5 percent penalty if paid by January 31. After this, the penalty is 10 percent of taxes due and unpaid. When the tax collection schedule is delayed, through no fault of the taxpayers, the Revenue Cabinet may institute a revised collection schedule. The revised collection dates allow a two percent discount for all payments made within thirty calendar days of the date the tax bills were mailed. Upon expiration of the discount time period, the face amount of the tax bill is due during the next thirty days. If the time period to pay the face amount has lapsed, a two percent penalty is added to the tax bill for payments made during the next thirty days. Upon expiration of this time period a ten percent penalty is added to all tax bills paid thereafter (KRS 134.020).

**Borrowed Money.** The fiscal court may borrow money in anticipation of revenue receipts to meet current operating expenses of the county and to pay interest and principal on bonded debts. Such borrowing may not exceed 75% of the unrealized and unencumbered revenue estimated in the budget from the current tax levy. The principal and interest must be repaid from the current tax levy (KRS 68.320). The fiscal court may also borrow and repay during a fiscal year by following the guidelines of the "Short-term Borrowing Act", KRS 65.7701 to 65.7721. See Chapter 5 of this publication for details on this program.

**Community Foundations.** A city, county, urban-county government or charter county government may set up a community foundation designed to accept gifts, bequests, devises, or other transfers, for charitable objectives for the citizens of the local government. Provisions are made for any conditions, limitations, or requirements contingent upon the gift, and provisions are made for the return of donations if the foundation loses its status as a charitable organization, if it is liquidated, or if it violates a provision established by the local government governing body (KRS 65.1575).





## **CHAPTER V**

### **COUNTY FINANCIAL ADMINISTRATION**

#### **General Provisions**

The authority to appropriate county funds is vested in the fiscal court (KRS 67.080). The statutes also assign other elected or appointed county officials various powers and responsibilities for the preparation of the county budget, the management of county funds, and the oversight of fiscal affairs. State funds received or disbursed by county officials must be accounted for in compliance with the uniform system of accounting prescribed by the Department for Local Government (KRS 46.010). These statutes will be discussed in detail below.

In addition to statutory provisions, some aspects of county financial administration are governed by county administrative codes. The fiscal court is required to adopt an administrative code to set forth procedures for: general administration; administration of fiscal affairs including the county budget; filing claims against the county and preparing financial records; personnel administration; and county purchasing and delivery of county services. Each year during the month of June the fiscal court is required to review the administrative code and may amend its provisions by a two-thirds majority vote. During the year the county judge/executive may submit amendments for approval by a majority of the fiscal court (KRS 68.005).

#### **The County Budget**

The county budget is a document which proposes expenditures for certain items (salaries, equipment, rent, etc.) or purposes (law enforcement, health facilities, road construction, etc.), with cost estimates attached to each item or purpose. So that the budget may be a link between the county's financial resources and future actions, alternative policy goals with price tags attached must be weighed and judged according to the political and fiscal needs of the county.<sup>30</sup>

#### **Budget Preparation**

The budget process is initiated by the county judge/executive, with the preparation of the proposed budget providing for the expenditure of all county funds. Proposed expenditures must be classed according to budget units representing the various activities of county government, including:

- (a) General expenses of county government;
- (b) Protection to persons and property;
- (c) General health and sanitation;
- (d) Social services;
- (e) Recreation and culture;
- (f) Transportation facilities and services;
- (g) Debt service;
- (h) Administration and miscellaneous; and
- (i) Jail operations (KRS 68.240).

In addition to the proposed budget, the county judge/executive must also prepare a statement of estimated county receipts from local, state, and federal sources. In estimating county receipts, the county judge/executive is aided by an official estimate of real property, personal property and new property assessment, which the property valuation administrator must submit to the judge/executive by April 1 of each year (KRS 68.245).

The portion of the county budget that provides funds for jail operations is prepared by the county judge/executive, the jailer and the county treasurer (KRS 441.215). This line item budget and revenue estimate must be submitted to the fiscal court by April 1 of each year. The completed jail budget is made a part of the general county budget for fiscal court investigation and approval.

Both the proposed budget and the estimate of revenue must be submitted to the fiscal court by the judge/executive by May 1 of each year. At this stage in the budget process, the fiscal court has the responsibility of investigating the proposed expenditures and the court may comment on or amend the proposal (KRS 68.240).

Not less than twenty days prior to the time of adoption of the county budget, the county judge/executive must submit copies of the budget proposal to the state local finance officer for approval as to form and classifications. The state local finance officer may

approve and return the budget or he may withhold approval until necessary amendments have been made (KRS 68.250).

KRS 68.260 requires that, following approval by the state local finance officer, the proposed budget be submitted to the fiscal court for adoption no later than July 1, or within seven days of the receipt of the certified assessment from the Revenue Cabinet, whichever is later. KRS 68.260, as amended in 1988, also requires that the budget as presented and amended be adopted as of July 1. The budget must also be posted in the courthouse near the front door, and must be published, pursuant to KRS Chapter 424, at least ten days before final adoption by the fiscal court. The combination of these requirements may create conflicts which make it impossible to comply strictly with KRS 68.260. If for some reason the certified assessment is not received on a timely basis, or the budget as approved by the state local finance officer is delayed, there may not be sufficient time to comply with notice requirements and to adopt the budget by the July 1 deadline.

KRS 68.260 also assumes fiscal court agreement on the budget by July 1. If agreement is not reached, the implication is that the budget must be adopted anyway. Since KRS 68.250 requires that the budget be sent to the state local finance officer not later than twenty days before the time for adoption, whether or not amended by the fiscal court, it is conceivable that the fiscal court could be deadlocked in both the initial review process, pursuant to KRS 68.240, and in the final review, pursuant to KRS 68.260, and the budget would still be adopted. The Attorney General has advised, however, that "automatic" adoption of the budget would make the vote of the fiscal court meaningless and render the statute internally inconsistent. A tie vote would be the same as a defeat, and the county would be without a budget until one was finally adopted. The Attorney General has also advised that sanctions might be levied against members of the fiscal court for failure to adopt a budget under KRS 68.990, 522.030, and 61.170. In addition, a mandamus action might be brought against the fiscal court members who voted against the budget, to ask the circuit court to require the adoption of a budget (OAG 88-45).

After adoption, the budget may be amended to provide for the expenditure of unanticipated revenue. Such an

amendment must show the source and amount of unexpected funds and the budget units that are to be increased. Like the original budget, the budget amendment must be submitted to the state local finance officer for review and approval (KRS 68.280). The fiscal court also has the authority to transfer money between budget units in the case of an emergency or to provide for increases or decreases in the number of deputies employed in a county official's office (KRS 68.290).

The county judge/executive is charged with administering the provisions of the budget following its adoption by the fiscal court (KRS 67.710).

### **Sharing of Revenues**

A county may by ordinance enter into cooperative interlocal agreements for the sharing of revenues with another county, a city, an urban-county or a charter-county. The distribution of revenues shall be as agreed upon by the local governments (KRS 65.245).

### **Budget Restrictions**

The Constitution and statutes place various restrictions on county expenditures, diversion of budgeted funds, and debt payment.

**Required Appropriations.** Counties with outstanding general obligation bonds are required to maintain a sinking fund composed of a principal account and an interest account. The amount allocated to the principal account must equal the proportional yearly amount necessary to retire each bond issue at maturity. Amounts sufficient to pay interest due on bonds must be allocated to the interest fund annually (KRS 68.240).

The county budget, by state law, must make various other appropriations. Money must be allocated for the salary or office expenses of several county officials, including the county judge/executive (KRS 67.705), coroner and deputy coroners (KRS 64.185, 72.415), and the property valuation administrator (KRS 132.590). Additionally, certain expenses of conducting elections must be borne by the county (KRS 117.105 and 117.345). Payments must also be made for mandatory audits of county funds and officials (KRS 43.070).

**Limits on Appropriations.** Section 180 of the Constitution and KRS 68.100 require each ordinance levying a tax to specify the purpose for which the tax is levied. Revenue raised by a tax for one purpose may not be budgeted for other purposes until the original purpose for the tax has been accomplished. Once the original purpose has been met, any remaining funds may be diverted to other needs, in accordance with the provisions of KRS 68.120.

The statutes also set a maximum limit on the amount a county may expend in any year. The fiscal court is prohibited from spending funds in excess of the amount levied and collected for that year (KRS 68.110). Any indebtedness contracted in violation of KRS 68.100 and 68.110 is void and unenforceable. Further, members of the fiscal court who voted to expend tax revenue for any purpose other than that for which it was raised, or any employee or official who could have stopped the expenditure, may be personally liable to the county (KRS 68.100).

There appears to be some question about the extent of personal liability of members of the fiscal court in cases of financial mismanagement. The Court of Appeals has ruled that there is no liability for errors of judgment in the expenditure of public money. "Liability arises only when the fiscal court spends a fund collected for one purpose for some other purpose."<sup>31</sup> In later cases, the Court of Appeals has noted that the statute makes no ethical distinctions between misappropriations for selfish purposes and similar misapplications of funds for paying other public debts. The offense lies in the breach of public trust.<sup>32</sup>

**Fourth Year Restriction.** Except in cases of emergency unanimously certified by the fiscal court, the county/judge executive and the state local finance officer, no county fiscal court may, during the first half of its fourth year in office, spend or encumber more than 65% of all its current funds budgeted for that year, except for payments on bonded indebtedness (KRS 68.310) or from the road fund, as long as there is an equivalent sum in the general fund to the road fund. That equivalent sum may only be spent after January 1 of that fiscal year.

## **Budget Funds**

**Transfer Between Funds.** The Constitution contains very stringent rules governing the management of special county funds. A special tax collection for one purpose may not be spent for any other purpose (Constitution, Section 180). However, the General Assembly has provided that when the special object or purpose for which a tax was levied has been accomplished, any amount remaining in the special fund shall become a part of the general revenue fund of the county, or the money may be invested or kept for a similar expense in the future (KRS 68.120). In addition, such money may be transferred by the fiscal court from one budget unit to another to provide for emergencies. The order of the fiscal court shall show the reason for making the transfer and the nature of the emergency (KRS 68.290).

**Investment of Idle Funds.** The fiscal court, the county treasurer, elected county officials and other local governing bodies may invest idle funds in United States government bonds, Kentucky state government bonds, savings and loan associations, federally insured interest-bearing bank deposits, and shares of mutual funds which meet certain requirements. The fiscal court may require the sheriff, county clerk and county treasurer to invest idle funds subject to their control. The state local finance officer is authorized to assist the investment programs of local governments and county officials by providing advice and technical assistance. Subject to certain statutory limits, counties and county officials may participate in investment pools created by the state local debt officer or associations of county officials or counties (KRS 66.480).

**Road Investment Fund.** Any accumulation in the sinking fund for county road bonds may be loaned by the fiscal court on first mortgage real estate security, on the basis of 50% of its value, at the legal rate of interest, which shall accrue to the sinking fund. Prior to the loan, all titles must be checked and cleared by the county attorney (KRS 178.200).

### **Financial Administration and Supervision**

The administration and oversight of county expenditures involve both county and state officials. Within county government, the county judge/executive, the fiscal court, and other elected and appointed county officials have certain responsibilities for financial

administration. State law also requires an annual audit of county offices and funds by the Auditor of Public Accounts (KRS 43.070).

### **County Judge/Executive**

The county judge/executive has general responsibility for keeping the fiscal court advised of the financial condition and needs of the county (KRS 67.710). He must therefore require elected or appointed county officials whose offices use county funds, and all boards, commissions, and special districts to submit detailed annual financial reports to the fiscal court (KRS 67.710).

A more specific set of responsibilities for the county judge/executive is mandated by KRS 68.360. This law requires him to prepare a report at the end of each quarter of the fiscal year for submission to the fiscal court and the state local finance officer, and for posting in the courthouse. Such quarterly reports must include detailed information on the condition of each fund of the county budget. On a daily basis, the county judge/executive co-signs, with the county treasurer, all warrants for the payment of funds (KRS 68.020, 68.275). The fiscal court may authorize the automatic payment of recurring expenses through the adoption of a standing order (68.275).

The 1990 General Assembly enacted legislation that requires counties and special districts with taxing power to annually complete a uniform financial information report. As chief executive officer of the county, the county judge/executive must ensure that the county's report is completed as required by law. Reports are due to the Department for Local Government on February 1 of each year. The county may have the uniform financial report completed by its auditor pursuant to KRS 43.070 or KRS 64.810. Each special district may have the report completed by its auditor, selected pursuant to KRS 65.065. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government must note on the report, the name, address, and dollar amount appropriated to the agency, board, or commission (KRS 65.905).

The Department for Local Government must by administrative regulation prescribe the format of the

report, and must use this report to replace as many of the financial information forms it requires local governments to submit as possible (KRS 65.905). The report must include information relating to demographics, bonded indebtedness, debt service requirements, lease-purchase agreements, tax rates and revenues, licenses, fees, utilities, intergovernmental and miscellaneous revenues, charges for service and expenditures (KRS 65.190).

Failure to submit a uniform financial information report will make a county ineligible to receive county or municipal road aid money pursuant to KRS 177.360 or 177.366.

### **Fiscal Court**

The fiscal court's general authority for supervising county funds is set forth in KRS 67.080. Under this statute, the fiscal court may "cause correct accounts and records to be kept of all receipts and disbursements of the public funds of the county...." In performing this function, the fiscal court is empowered to have the accounts of all county officers audited in accordance with the provisions of KRS 43.070 and 64.810. Counties containing cities of the first class are specifically authorized to employ an auditor and an assistant auditor (KRS 68.130). In addition to these general powers, the fiscal court exercises further control of the county's finances through appointment and removal of the county treasurer (KRS 68.010). The fiscal court also reviews all claims prior to payment, except those preapproved by the issuance of a standing order by the fiscal court, and, for good cause shown, may order that a claim not be paid (KRS 68.275).

### **County Treasurer**

The county treasurer, an officer appointed by the fiscal court, receives county funds from various county tax and revenue collectors, keeps county financial records and reports and disburses county money (KRS 68.010).

KRS 68.020 describes the powers and duties of the office of county treasurer. The treasurer must receive and receipt all money due the county and disburse county funds as authorized by the fiscal court. Warrants (checks) drawn on the county's accounts must be co-signed by the treasurer



and the judge/executive. The treasurer must be careful in counter-signing on the various budget funds because he may be liable on his bond for warrants in excess of a budget fund (KRS 68.300).

The treasurer also has the job of keeping books of accounts of county financial transactions. These records must be kept in the manner directed by the state local finance officer (KRS 68.020). At the beginning of each month, he must balance his books and report to the county judge/executive and each fiscal court member the county's receipts, disbursements and the balance in each budget account (KRS 68.360). At the close of each fiscal year the county treasurer must make a complete settlement of accounts with the fiscal court (KRS 68.020). After the fiscal court approves the treasurer's annual settlement, records of the settlement are filed in the office of the county clerk (KRS 68.030).

KRS 68.020 also assigns to the county treasurer the duty of overseeing collection of money due the county. When directed by the fiscal court he must, or acting on his own he may, institute court actions in the name of the county to collect money due from tax collectors or others indebted to the county. The county treasurer must keep a record of the condition of any such actions and the money collected as a result.

### **County Attorney**

The county attorney is directed to oversee claims against the county treasury and to oppose all unjust and illegally presented claims (KRS 69.210).

### **County Clerk**

The county clerk must record the settlement of accounts of the treasury with the fiscal court, as well as all statements, vouchers, and related papers (KRS 68.030).

### **State Audits**

Annual audits of the funds contained in each county's budget, and of the books, accounts and papers of county clerks and sheriffs are conducted by the office of the state Auditor of Public Accounts (KRS 43.070). The fiscal court or the county clerk or sheriff may employ a certified

public accountant if the state Auditor declines to perform the audit, or fails to respond within thirty days to a written notice from the fiscal court or clerk or sheriff of intent to employ a certified public accountant. In the case of an emergency requiring an immediate audit which the Auditor of Public Accounts cannot complete within the requested deadline, the Auditor must authorize the fiscal court, the county clerk or the sheriff to engage a certified public accountant (KRS 64.810).

The fiscal court must send written notice by July 31 following the fiscal year to be audited. The county clerk or sheriff must send written notice by January 30 following the calendar year to be audited. If the state Auditor performs the audit of the county budget, the fiscal court must pay only one-half the cost. The fiscal court must pay all of the costs of a state audit of the county clerk or sheriff (KRS 43.070). When a certified public accountant is employed, the fiscal court must pay all of the cost of the county audit, and the county clerk or sheriff must pay the cost of the audit from funds of the office. Emergency audits of the sheriff and county clerk must be paid for by the office audited. If the whole county is the subject of an emergency audit, the fiscal court must bear the cost (KRS 64.810).

No county may be required to pay for more than one audit of the same fund or office, unless discrepancies are found (KRS 43.070). Whether performed by the Auditor of Public Accounts or by a certified public accountant, audit reports must be submitted to various state officials and to a newspaper in the county. In the case of audits performed by the Auditor of Public Accounts, the report must be sent to a newspaper having general circulation, and in the case of audits performed by a certified public accountant, the report must be sent to the newspaper having the largest paid circulation. In either case, the letter of transmittal must be published in the newspaper (KRS 43.090, 64.810).

### **Uniform Financial Information Reports**

Every county must submit a uniform financial information report to the Department for Local Government by May 1 of each year. The contents of the report are prescribed by regulations of the Department for Local Government. Each report must include information on

demographics, debt, revenue and expenditures. The county may have the report completed by an auditor selected pursuant to KRS 43.070 or 64.810. The final quarterly report filed by a county in accordance with KRS 68.360 shall suffice as the uniform report if that quarterly report contains all the information required by KRS 65.190 (KRS 65.905). A county that fails to submit a report will be ineligible to receive road aid (KRS 65.900-65.925).

## **Borrowing and Debt Payment**

### **Constitutional Provisions**

Because of the severe financial crisis associated with the issuance of railroad bonds by local governments, the 1891 Constitution contains many detailed restrictions on local government borrowing. Before the Constitutional amendment of 1994, two thirds of the voters must have approved any indebtedness above the income and revenue for that year. The 1994 Regular Session proposed amendments of the Constitution in Chapter 168 of the Constitution, one section of which amended Const. Sec. 157 by deleting the two-thirds requirement.

### **Short-Term Borrowing**

Counties may borrow money within a fiscal year to meet the expenses of that fiscal year without resorting to general obligation or revenue bonds. KRS 68.320 permits the county to borrow up to seventy-five percent of unrealized and unencumbered revenue estimated in the budget for the current fiscal year to meet current expenses of the county as they accrue, and to pay interest and principal on bonded debts.

KRS 65.7701 to 65.7721, the "Short-term Borrowing Act", provides for borrowing and repaying during a fiscal year by the issuance of notes. The notes may be secured by "revenue", which includes all funds received by the county which are not taxes, by real or personal property taxes, or by both "revenues" and property taxes. The county must implement this short-term borrowing program by ordinance. The notes to be issued may not exceed seventy-five percent of the moneys to be collected within the current fiscal year and intended as security for the notes. The county may make a single authorization for notes, and issue and sell portions of the amount of authorized notes at various

times within the fiscal year. All notes must mature no later than the last day of the fiscal year in which they are issued. The notes shall have the privilege of exchange and registration, and shall be subject to the right of prior redemption.

The county may establish sinking funds or note retirement funds as a method of providing for the repayment of the notes. The holders or owners of the notes may be given the right to have the notes continually secured by the faith and credit of the county, and each note shall bear on its face a statement to that effect and to the effect that the right of payment on the note is limited to the taxes or revenues pledged under the ordinance.

The county must notify the state local debt officer in writing in order to validate the notes. The notification must include the interest rates or method of determining rates, the approximate date of issue, maturity dates, the trustee or paying agent, if any, and a copy of the certificate of the county as to taxes or revenues to be collected during the term of the notes. The approval of the state local debt officer is not required to validate the notes (KRS 65.7719).

### **Long-Term Borrowing**

A county may incur indebtedness up to 5% of its assessed valuation for public road purposes, provided approval of the voters is obtained. To finance such indebtedness, a tax not to exceed 20 cents per \$100 of assessed valuation may be levied (Constitution, Section 157A).

No county may incur indebtedness in excess of 2% of the value of the taxable property in the county (Constitution, Section 158). Debts incurred as a result of emergencies do not fall within the limitations imposed by Section 158. Furthermore, the old Court of Appeals ruled in *Shearin v. Ballard County*, 103 S.W. 2d 292 (1937), that the limitations on counties in this section do not apply to bonds issued for roads and bridges pursuant to Section 157A of the Constitution.

No county debt may exceed a term of forty years and all indebtedness must be supported by an annual tax

sufficient to pay the interest and to create a sinking fund (Constitution, Section 159).

Bonds issued by county governments are exempt from taxation in any form by any other unit of Kentucky local government or by the state (Constitution, Section 171).

The Commonwealth may not assume the debt of any county unless the debt is due to conditions of war or insurrection (Constitution, Section 176).

All laws authorizing the borrowing of money shall specify the purpose for which the money is to be used. The money may not be used for any other purpose (Constitution, Section 178).

Counties may not lend credit to any corporation, association or individual, except for road purposes (Constitution, Section 179).

## **Debt Administration**

Prior to the 1891 Constitution, the legislature actively supervised county debt through a combination of general and special laws. Special local acts were passed to deal with particular debt situations in one specific county or a small group of counties.

The 1890 Constitutional Convention attempted to remedy the chaotic situation created by numerous inconsistent local acts by prohibiting enactment of local acts by the General Assembly (Constitution, Sections 59 and 60). The legislature was then forced to turn to general laws to regulate local debt. These laws provided for court validation of local debt, but many counties were still unable to repay perfectly legal debts.

Defaults during the depression of the 1930's were so numerous that pressure from creditors forced the state to turn to still another approach. The 1938 County Debt Act established procedures for debt validation through administrative law (KRS 66.280 - 66.390).<sup>33</sup> This solution proved to be rather effective for general obligation bonds, but the courts exempted revenue bonds from the act. Several state laws have been passed in attempts to plug this loophole. In 1966 the General Assembly did pass legislation requiring notification of -- but not approval by -- the state local finance officer (now state local debt officer) of all local bond issues (KRS 66.045). In the 1996 Regular Session, the Legislature included obligations along with the bonds. The notification requirement is waived if the bonds or obligations come under the purview of KRS 65.940 to 65.956, which is the "Governmental Leasing Act." The state local debt officer may issue advice regarding revenue bonds and obligations if such advice is requested by the county involved (KRS 66.045).

## **Debt Payment**

Many different types of securities may be sold as part of a single debt issuance. Two types of securities that are used are serial bonds and zero-coupon bonds. Serial bonds require periodic interest and principal payments until the bonds mature. Zero coupon bonds are sold to investors at a price that is lower than the stated future value of the security (a discount). Periodic compound interest payments are deposited in an account until the

maturity date, the date when the security attains its full face value. Investors then receive the full value of the bond, which reflects earnings for the investment. Documents are written for each debt issuance that define the source of funds for payment of interest and principal, timing of payments, debt retirement schedules, security provisions and other matters relating to the issuance. When necessary, accounts that are secondary to the General Fund are established to efficiently administer reserves associated with a specific debt issuance.

### **Bankruptcy**

Any county may file a petition of bankruptcy in accordance with the Federal Bankruptcy Act and its amendments. The proposed plan of bankruptcy must be approved by the state local finance officer and the state local debt officer (KRS 66.400). No county has ever done so.<sup>34</sup>

### **Earnings of Sinking Funds**

Until 1996, the state local debt officer and the fiscal courts had the authority to invest any funds that accrued to the county sinking fund. House Bill 819 repealed KRS 66.380, which authorized that privilege. House Bill 819 itself overhauled the way in which local governments can issue and discharge general obligation bonds.

### **State Notification**

No bonds or obligations may be issued by any local government without prior written notice to the state local debt officer. The notification must contain complete information about the bonds, including maturity schedule, interest rate, date of issue, purpose, paying agent and any additional information the state local debt officer may require (KRS 66.045). The state local debt officer may provide technical and advisory assistance regarding the issuance of bonds and obligations to those local governments whose governing bodies request such assistance (KRS 66.045).

### **General Obligation Bonds**

General obligation bonds constitute a debt of the county to be repaid from a first claim upon county revenues. All general obligation bonds are subject to a general maturity period limitation of forty years. It is the public policy of the Commonwealth that interest rates payable by public bodies upon public obligations be competitive with those rates which are permitted by other states (KRS 58.420), subject to any approval that may be necessary under other laws (KRS 58.430). In the 1994 Session of the General Assembly, the Legislature voted to put on the ballot an amendment of Section 157 of the Constitution which would remove the requirement of two-thirds voter approval on questions of general obligations. The voters ratified this amendment in November of 1995. Contracts pertaining to the subject which were in effect at the time of the effective date of the amendment would remain unaltered by the amendment until their expiration or renegotiation. Table VIII is a list of specifically authorized general obligation bonds.

#### **Home Rule Bonding Power**

Historically, the power of counties to issue bonds to fund a particular type of public project depended on specific grants of authority from the General Assembly, but with the passage of the County Home Rule Act (KRS 67.083) counties gained the power to issue bonds not in conflict with the statutes or Constitution, for a broad range of public purposes (see Chapter II).



**TABLE VIII**  
**GENERAL OBLIGATION BONDS**

Purpose	KRS Citation
1. Urban Renewal	99.400
2. Roads and Bridges	178.170
3. Drainage Projects	269.080

#### **State Local Debt Officer**

No county may issue general obligation bonds until the proposal has been approved by the state local debt officer, as required by KRS 66.310, or by a court of competent jurisdiction.<sup>35</sup> Although the constitutional debt limit for counties is 2% of the value of the county taxable property, any general obligation debt in excess of .5% of the assessed property value must be approved by the state local debt officer (Constitution, Section 158 and KRS 66.310).

The state local debt officer must hold a hearing on a proposed bond issue, and he must withhold approval if he believes the financial condition and prospects of the county do not warrant a reasonable expectation that interest and principal maturities can be met when due without seriously restricting other expenditures of the county (KRS 66.310). Thus, the decision approving or rejecting the issuance of the bonds is based on practical as well as legal considerations.<sup>36</sup>

Within 15 days, the decisions of the state local debt officer may be appealed to the county debt commission. The decisions of the county debt commission may be appealed to the Franklin Circuit Court within 30 days. Refunding bond decisions may be appealed within 30 days to either the Franklin Circuit Court or to the circuit court of the county involved (KRS 66.310).

When a county bond issue is approved, record of the approval must be made in the minutes of the next meeting of the fiscal court (KRS 66.310).

Any county may petition the state local debt officer for assistance in formulating a plan for reorganizing its debt structure. If any county is having difficulties in

managing its debt structure, as evidenced by default in payments or other evidence of financial mismanagement, the state local debt officer may investigate the debt situation and credit standing of the county and negotiate with officials and creditors of the county in order to formulate a reorganization of the debt structure (KRS 66.320). The County Debt Act provides that a county may completely surrender management of its debt structure to the state local debt officer. In such cases, all sinking funds and revenues must be transferred to the state local debt officer. The transfer, once made, is irrevocable. The details of administration of the program are contained in KRS 66.370.

## **Evaluation**

Although the limitations of the Kentucky Constitution and state statutes on county government borrowing are considered to be rather stringent, Kentucky is not unusual in this respect. Most states impose constitutional or statutory limitations on the borrowing of their local governments. The most common limitation sets a ceiling on debt as a percentage of the property tax base of the local government, as is done in Kentucky for general obligation bonds. A second, somewhat less common, restriction is the requirement that the issuance of bonds be approved by referendum.

State limitations on local government borrowing are designed to safeguard the solvency of local governments and to protect bondholders. Such restrictions focus on the property tax base of the individual local government, even though that same base may be shared by several overlapping local governments.<sup>37</sup>

Sections 157, 157A, and 158 of the Kentucky Constitution relate maximum indebtedness directly to the assessed valuation of property. As a result of these restrictions, counties have resorted to the use of special revenue bonds pegged to a particular source of revenue rather than depending upon general property taxes. Revenue bonds generally carry a higher interest rate than do full faith and credit bonds.

### **Revenue Bonds**

Revenue bonds are secured by a particular source of revenue, such as a special tax, fee, rental, or assessment (See Table IX). Revenue bonds do not constitute a general indebtedness of the county. The "full faith and credit" of the county is not pledged. A referendum is not required. Only the revenue of the project, or a portion thereof, is pledged. The interest rate for revenue bonds is generally higher than for general obligation bonds.

Revenue bonds are not subject to statutory debt limitations, and they are not obligations of the county taxpayer.<sup>38</sup> Strictly defined, revenue bonds are those for which interest and principal are payable exclusively from the earnings of a specific enterprise. However, in Kentucky, the concept has been extended to include bonds

payable by special taxes, or by portions of the general levy.

**TABLE IX  
REVENUE BONDS**

Purpose	KRS Citation	Maturity Ceiling	Revenue Source
1. Public Project	58.020 58.030	40 years	Rent Grants Donations Appropriations
2. Energy Conservation	58.600-.615	Coterminous with the term of the guaranteed energy savings contract	50% of the projected annual energy cost savings
3. Joint Project (Interlocal Cooperation Act)	65.270	30 years	Project Revenues Donations Appropriations Grants
4. Urban Renewal	99.400 99.430	40 years	Project Revenues Grants Donations Appropriations
5. Industrial Buildings	103.210	30 years	Rent
6. Bridges and Tunnels (Counties with cities of the second class)	181.030 181.140	40 years	Tolls
7. Airport	183.630 183.650	40 years	Airport Revenue

NOTE: Interest ceiling provisions in KRS 58.030 and 65.270 were superseded by KRS 58.430. 1996 House Bill 683 removed the superseded interest ceiling provisions. For other citations see OAG 71-493 and OAG 81-346.

Revenue bonds, in effect, constitute a nonguaranteed debt. Such a debt may take several forms, but the three most common are: (1) direct issue of revenue bonds by the county; (2) creation of a special district, public corporation, or commission, with the power to issue revenue bonds for a specific public purpose; and (3) lease-purchase agreements, usually combined with a special district, public corporation, or commission.<sup>39</sup> KRS 58.180 establishes statutory requirements for the creation of a nonprofit corporation by a county to act as an agency in

the acquisition and financing of a public project through revenue bonds.

### **Interim Financing**

Counties must often wait months to receive the proceeds of a revenue bond issue or a federal grant to begin work on a project. This interim period may be used for project activities, if the county elects to use interim financing.

### **Revenue Bond Anticipation Notes**

When a fiscal court has made the legal determination to issue revenue bonds to finance a project, it may provide for the interim financing of that project by the sale and issuance of revenue bond anticipation notes. The interest rate of the notes must not exceed the maximum rate anticipated for the bonds and the maturity of the notes must not exceed five years (KRS 58.150).

### **Grant Anticipation Notes**

When a county has applied for and received federal-grants-in-aid, or when it is entitled as a matter of law to federal grants which will provide all or a portion of the funds required for the construction and installation of a public project, it may issue grant anticipation notes. The maturity ceiling of the notes is three years and the fiscal court may determine the interest rates (KRS 58.155).

### **State Assistance**

Several state agencies provide county officials with assistance and training in financial administration.

### **State Local Finance Officer**

Members of the state local finance officer's staff visit counties and provide informal training in budget preparation and administration for new or inexperienced county officials. The fiscal affairs of counties are required to be administered by the fiscal court, under the uniform county budget system. The state local finance officer supervises the administration of the uniform county budget and has provided a uniform system of accounts for all counties and county officials. He is permitted to

investigate, examine and supervise the accounts and operations of all local governments and his office requires an annual financial report from counties (KRS 68.210).

In cases where fiscal courts have encountered severe budget problems, the state local finance officer has in the past assumed the fiscal management of the county until the problem has been solved. In such cases the state local finance officer was authorized to invest the moneys which were surrendered to him by those counties not wishing to manage their debts. This investment authority was transferred to the state local debt officer by legislation enacted in 1994. In the 1996 Regular Session, KRS 66.380, the section granting this authority, was repealed by House Bill 819(30).

#### **Auditor of Public Accounts**

The county audit division of the state Auditor's office provides guidance and suggestions for improved record keeping to county officials when the county is audited each year.

## **Department for Local Government**

The Department for Local Government conducts annual programs to instruct local officials about their duties and responsibilities in the collection and expenditure of public moneys subject to their control and administration (KRS 147A.025).



## **CHAPTER VI**

### **GENERAL GOVERNMENT**

The fiscal court, as Chapter II shows, directs the operation of county government through its power to provide and finance government services. The county judge/executive (Chapter III) is responsible for administering and executing the policies of the fiscal court. Little has been said, however, of the laws that govern the day-to-day operations of county government. This chapter begins with an examination of the general provisions for the administration of county government and goes on to discuss some basic general government activities of the county.

#### **County Administrative Code**

Effective January 1, 1979, all counties were required to adopt administrative codes detailing procedures for the administration of county government (KRS 68.005). The jobs of drafting and periodically reviewing and recommending revisions to the administrative code have been given to the judge/executive (KRS 67.710). The fiscal court holds the power of final approval of the code and any amendments (KRS 68.005).

State law does not limit the areas that may be covered by the county administrative code, but KRS 68.005 does list several subjects that must be included in the code. It must include procedures and designate responsibility for the general administration of county government, administration of fiscal affairs, personnel administration, purchasing and awarding contracts, and delivery of county services.

The discretion of county officials in setting administrative procedures is limited; several of the areas covered in the administrative code are subject to some degree of direction or restraint imposed by state law. The county administrative code must, of course, be consistent with the provisions of state law. Chapter IV and Chapter V dealt with constitutional and statutory limits on county revenue and the county budget. Statutory procedures for the appointment of county officials are discussed in Chapter VII. Several other aspects of the administration of county government are similarly guided by state law.

## **Purchasing and Contracting**

State law contains several provisions that govern the way counties purchase goods and enter into contracts. KRS 424.260 provides that a county must make a newspaper advertisement for bids before it may enter into a contract or other agreement for materials, supplies (except perishable foods), equipment or non-professional services involving an expenditure of more than \$10,000. The fiscal court may require the sheriff or county clerk to advertise for bids on expenditures of less than \$10,000. A local school district may acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of Purchases or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price, unless the bidding procedure has already been initiated. This bid requirement does not apply when the county's chief executive officer, the sheriff, the county clerk, or a school superintendent, in the case of a school purchase, certifies that an emergency exists.

Procedures for purchasing and awarding of contracts by the county must also be included in the county administrative code. One alternative available for counties seeking to establish purchasing procedures is the Kentucky Model Procurement Code (KRS 45A.345 to 45A.460). These statutes include provisions on solicitation of bids, bidding, and other details related to purchasing. KRS 45A.343 provides that the adoption of KRS 45A.345 to 45A.460 is optional, but that upon its adoption no other statutes on purchasing will apply to a county.

Counties and other local governments seeking architectural and engineering services may use an alternative process called "qualifications-based procurement." Local governments choosing to adopt this method must collect "qualification statements" from architectural and engineering firms and must keep the statements on file for a year. Whenever a project is planned that will cost more than a set amount, the local government must notify every firm whose statement is on file. The project must be advertised in a newspaper, and the county must ask a professional organization to provide a list of firms capable of providing the service. All

firms that show an interest in the project are evaluated according to a set of criteria including ability, workload and past performance. Bids are considered only after negotiations with the top-ranked firms have begun (KRS 45A.720-750).

Any contract entered into by a county, whether under the Model Procurement Code or not, must require the contractor to reveal past violations of Kentucky laws regarding taxes, wages, occupational safety, unemployment compensation, or workers' compensation (KRS 45A.343).

Subject to certain restrictions contained in KRS 45A.050 and 200 KAR 5:050, county governments may participate in contracts between state agencies and vendors for the purchase of materials or supplies. The Department for Local Government is required to inform the purchasing agents of interested counties and other local governments of contracts in effect between state agencies and vendors (KRS 45A.050).

#### **Published Notice**

State law requires that the public be made aware of various activities of county government through published notice. Whenever an advertisement for a county is required by law to be published in a newspaper, the publication must meet the following requirements:

(a) The paper must be published in the publication area. A paper may not be excluded, however, solely because its printing or reproduction takes place outside the publication area.

(b) The paper must be of regular issue, at least once a week, and have the largest bona fide circulation in the county.

(c) The paper must bear a title or name and consist of not less than four pages and be the type the public resorts to for political, religious, commercial and social news (KRS 424.120).

The times and periods of publications of advertisements which are required to be made by law are as follows:

(a) When an advertisement is of a completed act, such as an ordinance, resolution, regulation, order, rule, report, statement, or certification, and the purpose of the publication is not to inform the public or the members of any class of persons that they may act or exercise a right within a designated period or upon or by a designated date, the advertisement must be published one time only, within thirty days after completion of the act.

(b) When the advertisement's purpose is to inform the public that they may or shall file a petition, protest or bid, etc., the advertisement must be published at least once, but may be published two or more times, provided that one publication occurs not less than seven days nor more than twenty-one days before the occurrence of the act or event.

(c) When the advertisement is for the purpose of informing the public concerning the sale of property or a notice of delinquent taxes, the advertisement must be published once a week for three successive weeks.

(d) Any advertising not within the scope of subsections (a), (b), and (c) must be published at least once, but may be published more frequently, provided that one publication occurs not less than seven days nor more than twenty-one days before the occurrence of the act or event.

(e) If the particular statute requiring that an advertisement be published provides that the day upon or by which an act may or shall be done is to be determined by computing time from the day of publication of an advertisement, the advertisement must be published once and the computation of time is from the date of initial publication (KRS 424.130).

If the statute does not designate responsibility for placing the advertisement, the county clerk is responsible. If the publication is for a district, board or commission of the county, the chief administrative officer or agent of that body is responsible (KRS 424.150).

KRS 424.195 provides for supplementation of printed notices by broadcast in certain cases.

Any resolution, regulation, ordinance or other formal action of any public agency that is adopted without compliance with publication requirements applicable to it is voidable by the courts (KRS 424.380).

Certain matters which must be published by the fiscal court are listed in Table X.

**TABLE X**  
**MATTERS TO BE PUBLISHED BY FISCAL COURT**

To Be Published	KRS	Remarks
Financial Statements	424.220	Every officer of every county, commission, district or public agency that collects public funds, except for Jefferson County and urban-county governments, must publish. Publication must occur 60 days after close of fiscal year. The officer may, however, publish an audit, prepared pursuant to KRS 43.070 or 64.810, in lieu of publishing the financial statement.
Optional monthly or Quarterly Statements	424.230	Officials may elect to publish quarterly statements in lieu of an annual statement.
Bids	424.260	For materials, supplies, equipment and other services of more than \$10,000, except when statute fixes larger sum, fiscal court fixes smaller sum for sheriff or county clerk, or there is an emergency.
Local Administrative Regulations	424.270	For regulations imposing liabilities or restrictions on the public.
Ad valorem Taxes	424.280	Due date must be published.
Election Ballots	424.290	Must be published not less than three days prior to primary or regular election by county clerk.
Delinquent Taxes	424.330	Must be published by fiscal court.
Invitations to Bid	424.360	If principal amount is \$10,000,000 or more on Municipal Bonds, invitation must also be published in a publication circulated to bond buyers.
County Ordinances	67.077	Ordinances must be published in full or in summary both before and after enactment. Charter county governments and urban-county governments are exempted.

## **Liability Insurance**

Kentucky follows the old legal principle of sovereign immunity, which means that the state and its counties may not be sued for tort or injury except as the state consents. Section 231 of Kentucky's Constitution authorizes the General Assembly to determine in what manner suits may be brought against the Commonwealth. The courts have interpreted this section to mean that only the General Assembly may waive sovereign immunity in Kentucky.<sup>40</sup>

The fact that several statutes allow counties to purchase motor vehicle insurance and mandate worker's compensation insurance does not mean the legislature has departed from the doctrine of governmental immunity for tort.<sup>41</sup> Instead, any suit instituted on these policies may be maintained against the county only for the purpose of obtaining a measure of the liability of the insurance carrier to the injured party. Therefore, the liability may not extend beyond the insurance coverage (KRS 67.180; KRS 67.186; OAG 80-538).<sup>42</sup>

When the General Assembly requires an agency of county government, such as a transit authority, to purchase liability insurance, that agency's sovereign immunity is waived to the extent of the insurance policy limits.<sup>43</sup>

Counties containing cities of the second, fourth, fifth or sixth class may purchase various kinds of insurance they deem advisable for covering county vehicles and for the compensation of employees injured during their employment by the county (KRS 67.180).

KRS 67.185 authorizes counties having first and third class cities to acquire auto and compensation insurance. This statute specifies that an insurance company waives the right to contest or deny liability by denying the liability of the county because of its governmental capacity. The fiscal court may also provide liability insurance and indemnity insurance for the benefit of a county-operated hospital. This provision should not be construed as waiving the immunity of the county or county-operated hospital from suit; they are liable only to the extent of the policy limits (KRS 67.186).

KRS 65.150 permits the purchase of insurance for employees or officials of a county or any board, commission, agency or authority of a county against any liability arising out of an act or omission occurring in the performance of legal duties. Counties and their boards, commissions and agencies may also purchase property damage insurance. Such policies may be paid for by the fiscal court out of county funds or by the fee officers themselves out of excess fees. Counties or fee officers may enter into self-insurance associations for the purpose of insuring themselves. These associations may borrow money and issue revenue bonds to fund the costs of providing insurance.

### **General Government Activities**

#### **County Buildings, Facilities and Property**

The power to control county property is granted to the fiscal court by KRS 67.080. This statute permits the fiscal court to buy, sell, and convey property for the lawful purposes of the county. Further, the fiscal court is responsible for the construction, maintenance and operation of all county buildings (KRS 67.080). The county judge/executive has the responsibility of carrying out the fiscal court's policies in regard to public buildings. The jailer may be employed as the superintendent of county buildings, if the jailer and the fiscal court agree (KRS 67.130).

The fiscal court also has been granted broad authority to provide buildings and facilities under KRS 67.083. This statute allows the fiscal court to levy taxes, issue bonds and appropriate funds for a number of public facilities, including correctional institutions, hospitals, libraries, museums, and parking facilities.

Although there is no explicit authorization for the fiscal court to rent or lease county-owned property, the practice has been upheld by the courts. The Court of Appeals held that KRS 67.080, which gives the fiscal court the authority to sell property, implies that the fiscal court may exercise general supervisory control over all county property. General supervision of county property would include the right to lease the property. As the Court of Appeals reasoned, "The power to sell includes the power to lease."<sup>44</sup>

Any policy regarding smoking in county office buildings and workplaces must be adopted in writing by the chief legislative body of the county. If smoking is restricted, accessible indoor smoking areas must be provided. The policy must favor allowing smoking in open public areas where ventilation is adequate and there are no restrictions otherwise placed on the area by the state fire marshal or another similar authority (KRS 61.165).

Regarding the carrying of concealed weapons on county-owned property, it is a criminal offense to carry a gun, even with a license, in a police station, sheriff's office, jail or detention facility, or in a meeting of the governing body of a county, municipality, or special district. A person carrying a concealed weapon may be asked to leave or be denied entrance to a portion of a building owned, leased, or controlled by a legislative body of a city, county, or urban-county government, if the proper ordinance is adopted and sign posted (KRS 237.110, 237.115, 244.125, 527.020, 527.070).

#### **Condemnation for County Purposes**

KRS 67.085 gives the fiscal court the general authority to use the condemnation process for acquiring property. When such action is taken it must be in the public interest.

When a county wants to acquire land for public use and an agreement with the owners cannot be reached the county may condemn the property in the manner provided by the Eminent Domain Act of Kentucky (KRS 416.540 to 416.680). Table XI lists a number of purposes for which the county is specifically authorized to exercise the power of eminent domain.



**TABLE XI**  
**EMINENT DOMAIN AUTHORITY**

<b>Purpose</b>	<b>KRS</b>	<b>Remarks</b>
Public project	58.140	Commonwealth acting through county, city or agency
General administrative or governmental, not authorized elsewhere in statutes	67.085	
Land for public housing	80.500	Regional housing authority, appointed by fiscal court
Urban renewal	99.360	Urban renewal commission, appointed by fiscal court
Elimination of blighted or deteriorated property	99.715	County containing a city of the first class
County roads	178.120	Condemned under procedure in KRS 416.540 to 416.680.
Additional land adjacent to existing road	178.125	
Establishing, expanding and operating airports	183.133(4)	Local air board, appointed by fiscal court
Establishing childrens' homes	201.070	In counties containing first class cities
Drainage of land	269.070	
Surface water drainage	269.270	
County roads	416.110	See also KRS 178.120

### **Planning and Zoning**

KRS Chapter 100 permits counties and cities to exercise some control over the way private property owners use their land. However, several requirements must be satisfied before a county may conduct planning or zoning

activities.<sup>45</sup> A county must be a member of a planning unit (KRS 100.113).

Planning units may be formed by a county acting independently (KRS 100.117), in cooperation with one or more cities (KRS 100.121), or as part of a region (KRS 100.123). Independent planning units are discouraged by the statutes: they may be created only if other governments are not interested in a joint unit (KRS 100.117). A county with a population of 300,000 or more inhabitants is considered a planning unit, containing all cities within such county. The county judge/executive and the mayor of the largest city in these counties must ensure that three of their appointees have no direct financial interest in any land development or construction industry. All members of the commission must disclose any such interest. Willful failure to disclose an interest could result in the dismissal of the member (KRS 100.137).

Following the creation of a planning unit, a five- to twenty-member planning commission is appointed. The method of appointment and the composition of the commission depend on the nature of the planning unit created and the number of participating governments (KRS 100.133).

The planning commission is responsible for preparing a comprehensive plan, which must include a statement of goals and objectives, a land use plan, a transportation plan, and a community facilities plan (KRS 100.187). In preparing the comprehensive plan, the commission is required to follow certain research procedures set forth in KRS 100.191. KRS 100.193 and 100.197 provide for the adoption of the comprehensive plan and for its periodic review and amendment.

Due to the proliferation of cellular towers in the past few years, and in consideration of the visual impact of those towers, local planning units, in conjunction with local legislative bodies, have been given the ability to regulate and plan for the siting of cellular antenna towers by registering with the Public Service Commission. This discretion was not extended to counties with cities of the first class (KRS 100.985, 100.987, 278.660 and 278.665).

Counties that are members of planning units which have adopted goals and objectives and the land use plan elements may enact interim zoning regulations which shall be

effective for up to twelve months, during which time the planning commission shall complete the remaining elements of the comprehensive plan. Interim regulations become void upon the enactment of permanent regulations or after the expiration of twelve months (KRS 100.201). KRS 100.203 to 100.271 set forth requirements regarding zoning regulation contents and procedures for enforcing and amending zoning regulations. Alternate regulations for zoning map amendment may be adopted by the fiscal court pursuant to KRS 100.2111. Land development may be controlled through the adoption of regulations that establish requirements for the approval, design, and maintenance of subdivisions (KRS 100.273). Methods for the adoption, amendment, and enforcement of subdivision regulations are governed by KRS 100.277 to 100.303. Counties that do not wish to establish a planning program or form a planning unit may adopt subdivision regulations pursuant to KRS 100.273(2).

#### **Binding Element Enforcement Act**

Planning commissions in counties with cities of the first class may issue remedial orders and impose civil fines as a method of enforcing a binding element. If a local government chooses to grant this power to the planning commission, it shall do so through the adoption of an ordinance. In such cases, the local planning commission will be granted six powers. It may:

1. Adopt rules and regulations to govern its operation and the conduct of its hearings;
2. Conduct hearings to determine whether there has been a violation of a binding element;
3. Subpoena alleged violators, witnesses, and evidence to its hearings, using a land use enforcement officer only;
4. Take testimony under oath;
5. Make findings and issue orders necessary to remedy any violation of a binding element; and
6. Impose civil fines, as authorized in the ordinance on any person found to have violated a binding element the planning commission is authorized to enforce.

When a citation is issued, the person cited is afforded a hearing of the planning commission, at his request, to determine the validity of the citation. Appeals to the judgment of the planning commission are heard at the local District Court. All actions and judgments of the planning commission are reduced to writing (KRS 100.401-100.419).

### **Area Planning Commission**

The planning operations of cities and cooperative planning operations of two or more adjacent counties, one of which contains a city of at least 50,000 but not more than 200,000 inhabitants, may be consolidated through the creation of an area planning commission (KRS 147.610). The area planning commission is a political subdivision possessing the power to levy an ad valorem tax, to enter into contracts, and to accept grants. KRS 147.670 lists the powers and duties of the commission in the area of planning. KRS 147.675 stipulates that the commission's planning powers are advisory only. Each participating unit of government is entitled to one representative on an area council, which selects members of the area planning commission and advises the commission (KRS 147.640). The dissolution or alteration of an area planning commission is provided for in KRS 147.620.

### **Purchase of Development Rights Program**

Urban-county governments may place before the voters the option of establishing a purchase of development rights program to actually purchase the right to develop or not develop certain parcels of land. In order to fund the program, the voters decide upon one of three funding mechanisms: an ad valorem tax, a license fee, or a transient room tax. If created, the urban-county government shall set out:

1. A statement of the purpose of the program;
2. A map of purchases;
3. The restrictions of development on those properties, including the duration of the restrictions;
4. A possible mechanism for removing restrictions;

5. A procedure for valuation and transfer of development rights;

6. The entity responsible for running the program; and

7. Any other provisions deemed necessary for the operation of the program (KRS 67A.840-67A.8850, 91A.390 and 91A.392).

## **Recreation**

Under KRS 67.083 and 97.010 county government has broad authority to maintain a variety of recreational programs, including parks, nature preserves, playgrounds, museums and other cultural and recreational facilities. The fiscal court may designate a park board to manage the recreational system (KRS 97.020). A county may also cooperate with a city or school board in providing parks and recreation and may vest management of the system in a joint board (KRS 97.010 and 97.035). In counties containing a city of the first class which have entered into a compact pursuant to KRS 79.310, the city and county are required to form a joint city/county park and recreational system (KRS 97.035). The park board may, for recreational purposes, accept gifts or grants (KRS 97.040) and issue revenue bonds (KRS 97.055).

## **Elections**

State election laws place most of the initial expense of elections on county government. These expenses include costs for printing ballots and instructions and for voting machines (KRS 117.345 and Constitution, Section 147). When authorized election costs are paid, a certified expense statement is sent to the State Board of Elections within 90 days after the election. The State Board of Elections then reimburses the county at the rate of \$255 for each precinct. The State Board of Elections will not pay a county's election expenses for any precinct containing fewer than 350 registered voters, unless the county has received prior approval from the board (KRS 117.345).

The fiscal court of any county must purchase or lease voting machines with available funds or with the proceeds of bonds issued for that purpose. The machines may be used

in regular, special, and primary elections in such precincts of the county as are designated by the fiscal court by an order entered of record (KRS 117.105).

The fiscal court may use its discretion in choosing the type and make of the machine, as long as it meets the requirements of KRS Chapter 117 (KRS 117.115). The type of machine required under the statutes is specified in KRS 117.125. Electronic voting systems are authorized by KRS 117.375 through 117.393.

The county clerk has many election responsibilities. These responsibilities include the custody and safe storage of voting machines (KRS 117.135) and arranging for the printing of ballots (KRS 117.145). The expense of repairing and keeping the machines in good mechanical condition is the responsibility of the fiscal court.<sup>46</sup>

Accountability and ethics also have a place in local elections. 1996 House Bill 637 (KRS 65.003) mandated that local elected officials must file financial disclosure statements in the same manner that is required in the Local Government Code of Ethics. The code is discussed at a greater length in Chapter VII.

### **County Libraries**

KRS 173.310 lists four ways for counties (except counties containing a first-class city) to provide library services:

(a) By establishing an independent library on the initiative of the fiscal court;

(b) By a petition and referendum process;

(c) By two or more adjacent counties combining to form a regional library district, using the methods in (a) or (b); or

(d) By contracting to receive service from an existing library (KRS 173.310).

Libraries created by the fiscal court under KRS 173.310 are supported by funds from the general county tax levy. An alternate means of providing library services is

the formation of a separate library taxing district, described in Chapter X.

### **Regional Libraries**

The establishment of a regional library must be by contract, in writing, by the fiscal courts of the counties involved. Expenses of organization are borne by each county, in proportion to the taxable property in the county. Regional library contracts continue in force for five years and no county may withdraw without the consent of all the participating counties. If at the end of the first five-year period there are no withdrawals, the contract stays in force for another five years (KRS 173.320). The affairs of a regional library are managed by a board of trustees appointed as provided in KRS 173.340.

Fiscal Court Contributions. When a legislative body provides for library service under KRS 173.310, it must appropriate money to maintain the service. KRS 173.360 provides that the appropriations will be:

(a) In regional libraries, not less than three cents or more than ten cents on each \$100 of property assessed for local taxation;

(b) In counties containing a city of the first class, not more than fifteen cents on each \$100 of property assessed for local taxation;

(c) In all other governmental units, not less than five cents or more than fifteen cents on each \$100 of property assessed for local taxation.

If the fiscal court establishes library service on its own initiative and the appropriation is less than the minimum specified, the minimum may be established through mutual agreement of the library board, the fiscal court, and the state Department for Libraries and Archives (KRS 173.360).

State involvement with local libraries consists of:

1. Providing assistance in the establishment of the organization and the provision of services;

2. Supervision of use and expenditure of federal and state funds;

3. Coordination of cooperative activities among public, school, college, university and special libraries.

**Counties Containing First-Class Cities.** The fiscal court of any county with a population of over 200,000 and a first-class city may contract with the board of trustees of the free public library of the city for library services. The fiscal court may make annual appropriations out of the county treasury to maintain and support the library (KRS 173.105). When a fiscal court of a county containing a population of 200,000 or more has entered into a compact with a first class city in the county, pursuant to KRS 79.310, the city and county are required to form a joint city/county department for the purpose of providing a free public library (KRS 173.105).

#### **County Law Library**

Each county is required to have a county law library, and the fiscal court must designate sufficient room for the library in the courthouse or a building adjacent to the courthouse. Alternate methods of financing and administering the county law library are set forth at KRS 172.130, 172.170, and 172.180.

The law library must consist of all volumes belonging to the state, and sent to county officials directed by law to receive such books. The county may acquire books, maps, or other articles for the library by purchase, gift, or device (KRS 172.100).

**Librarian.** The circuit clerk is the ex officio librarian of the law library and he receives a salary of not less than \$50 nor more than \$100 per month for this duty. The clerk keeps the rooms in order and maintains receipts for all books and furniture placed in the library. The receipts are given to the state law librarian and preserved at Frankfort. The circuit clerk takes an inventory of the state property in the library each December and reports to the state law librarian under oath before January 1 (KRS 172.110).

**Penalties.** Clerks who are delinquent in making the inventory required in KRS 172.110 shall be fined five



dollars for each month or part of a month they are delinquent. If a clerk permits any book of laws to be removed so that he cannot produce the book when called upon to do so, he shall be fined up to \$50.00 (KRS 172.990).

**Trustees.** Fiscal court members are trustees of the library, and must see that the circuit clerk properly discharges his duties. The fiscal court may appropriate money out of the county treasury to pay for legal books and replace decisions of the Court of Justice of Kentucky (KRS 172.130).

**Acts of 1916.** The provisions of KRS 172.100 to 172.160 do not apply to any county containing a second-class city which has a law library acquired under the provisions of Chapter 2 of the Acts of 1916.

## **County Records**

Chapter II discusses record-keeping duties of the fiscal court and the fiscal court clerk. Most elected and appointed county officials are required to keep records. Generally, the records kept by these officials are county records. The county clerk, the county's chief record-keeping officer, has a variety of records to maintain for the fiscal court (KRS 67.100). Moreover, he is responsible for recording and keeping various legal instruments, property records, liens on personal property, leases, surveys, plats, and many other types of records. The county clerk is prohibited from recording a deed that does not contain certain information required by KRS 382.135.

**Recordkeeping by Computer.** County records may be maintained by computer or some other rapid access data collection system, provided that public records are kept in a manner which will allow the public unlimited and speedy access to them (KRS 65.030).

## **Building Inspections**

The state building code gives county governments certain enforcement and inspection duties. While the state Department of Housing, Buildings and Construction handles enforcement of the state code for larger buildings and assembly places, counties and other local governments have been given the duty of state code enforcement for residential and small commercial and industrial buildings

within their jurisdictions. Single-family homes are, as of July 15, 1998, covered by the state building code. Even though the single-family homes now come under the Kentucky Building Code, it is up to the county or city to provide for any inspections of these homes. Basically, counties are required to inspect building plans and issue building permits, and to inspect new and existing buildings and issue certificates of occupancy. A county may either seek to perform these functions independently or it may unite with other local governments in a cooperative effort. Fees may be charged for building permits, but such fees may not exceed the costs of the county's services (KRS 198B.060).

### **Local Corrections**

State law places a responsibility on each county to provide for the incarceration of prisoners arrested in the county or sentenced or held by the courts of the county. A county fiscal court may meet this responsibility by maintaining a jail in the county or by contracting with another county for the use of its jail and providing vehicles, guards and drivers, as needed, for transporting prisoners (KRS 441.025). If a county elects to have a jail, it shall at the minimum comply with the health and life safety standards defined by KRS 441.055, or the jail may comply with the entirety of the requirements of KRS 441.055, especially if the county desires to house state prisoners. Under KRS 441.127, with the precluded order of the sentencing court regarding a specific inmate or inmates, a jailer may grant sentence credits to inmates of the jail who have committed misdemeanors. For every eight hours of work, one credit may be granted. One day of the sentence may be subtracted for every five credits earned. Credits may be revoked for violation of a list of offenses posted by the jailer, committed by the inmate while incarcerated. Various matters related to jail operations and jail finances are covered in KRS Chapter 441. Jail operations and procedures are also governed by a number of administrative regulations (501 KAR 3:010 to 501 KAR 3:150).

**Juvenile Detention Care.** In 1986, the General Assembly adopted the Unified Juvenile Code (KRS Chapters 600 through 645). The Code addresses both child abuse and offenses committed by children under the age of eighteen. The roles and responsibilities of peace officers in the juvenile justice system are also established by the Code.

(For a complete analysis of the role of peace and probation officers under the Code, see Kentucky Youth Advocates, Inc., "Peace Officers and Juveniles: A Guide to the Kentucky Unified Juvenile Code.")

A child may be held in custody for identification, examinations, processing and inquiries of a preliminary nature, including determining whether the child is subject to trial as an adult, for no more than two hours, unless an extension of time is granted by either the court, a trial commissioner or a court-designated worker. The child may be detained at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, the offices of the court designated worker, or in a hospital or clinic (KRS 610.220).

When taking a child into custody on a charge of committing an offense, a peace officer is required to inform the child of his or her constitutional rights. The officer must also notify the parent, relative, guardian or person exercising custodial control or supervision of the child that the child has been taken into custody, and the officer must also give account of the specific charges and the reasons for taking the child into custody.

If the child is to be released, the parent, guardian or person exercising custodial care must sign a written promise to bring the child to court. The officer provides the written promise and a written report to the court (KRS 610.200). If a child is detained for the alleged commission of a public offense and not released, a hearing must be held as soon as practical. The hearing must be held within 24 hours if the child is detained in an intermittent holding facility or within 48 hours if the child is detained in a secure juvenile detention facility or a juvenile holding facility, the child shall be referred to the Department of Juvenile Justice for a security assessment. If detained in a state-operated facility, the child shall be referred to the Department of Juvenile Justice for a security assessment (KRS 610.280).

Each county must provide detention facilities for children held in custody while their cases are pending before the district court. These facilities may be maintained by counties, public agencies, or private organizations (KRS 67.0831).

Peace officers, upon request of the court, serve summonses requiring the appearance of the person with custody of the child and the child (KRS 610.040).

A peace officer is authorized by a certified court order to take a child into custody and deliver him to the place directed in the order (KRS 610.110).

The taking of a child into custody is not termed an arrest unless the court has made the decision to try the child in circuit or district court as an adult wherein the child will then be able to post bail according to the applicable laws regarding bail. (KRS 610.190).

A peace officer may take a child to a court-approved center offering voluntary services to children and release the child without filing formal charges, if the offense is not a felony, and if he has received permission of a parent or other responsible adult and has followed court-established guidelines for such release (KRS 610.255).

**Juvenile Probation Officer.** In counties containing a city of the first or second class, the county judge/executive may appoint probation officers to district court as authorized by the fiscal court. The officers are subject to control of the district court judge (KRS 605.050). In counties containing an urban-county government the mayor appoints the probation officers (KRS 605.050).

A probation officer is required to:

- 1) Make investigations;
- 2) Be present in court to represent the interest of the child when the case of a child he or she investigated is being heard;
- 3) Furnish information;
- 4) Advise the court as to the proper disposition of the case;
- 5) Take charge of the child before and after the hearings as he or she is ordered;
- 6) Visit and supervise the child placed on probation;
- 7) Encourage and aid the child to keep probation terms;
- 8) Provide for the child's rehabilitation;

9) Make whatever reports and records the court requires;

10) Supervise the transfer of the child to and from homes or facilities as the court directs; and

11) Work cooperatively with members of the Cabinet for Human Resources (KRS 605.060).

### **Charities and Hospitals**

By a long tradition, county government carried out a number of programs in the areas of welfare, health, and aid to charitable organizations. These programs were based on statutes granting specific authority and specific forms of administration. The County Home Rule Act grants county government the general authority to provide hospitals and health and welfare programs (KRS 67.083). With the establishment of this general authority, many specific statutes were repealed, allowing counties to continue these functions but giving them more authority to select administrative means. The state has retained, however, detailed directions in the area of regional mental health.

**Regional Mental Health-Mental Retardation Program.** Any combination of cities or counties with a population of over 50,000 may establish a regional community mental health-mental retardation services program. Those cities and counties smaller than 50,000 may establish a regional program with the consent of the Secretary for Health Services. The program may be administered by a community health board or by a nonprofit organization (KRS 210.370).

The first step in establishing a regional program is to select a mental health-mental retardation board of at least nine members. If a nonprofit corporation is administering the program, it selects the board; otherwise, the chief executives of the participating cities or counties each select two members to a committee that selects the board. The board must be representative of the population (KRS 210.380).

Subject to the provisions of KRS Chapter 210 and administrative regulations of the Cabinet for Health Services, each board shall:

(a) Review and evaluate services provided and report to the Secretary and the administrator of the program;

(b) Raise money at the local level and promote public support for local government appropriations;

(c) Seek working agreements with other social service, educational and judicial agencies;

(d) Develop policies to stimulate community relations;

(e) Review the program's annual plan and make recommendations;

(f) Administer the mental health program when so authorized (KRS 210.400).

The Secretary of Health Services is authorized to make grants to assist regional programs in mental health-mental retardation. The funds are used to provide inpatient and outpatient services, partial hospitalization or psycho-social rehabilitation services, emergency services, consultation, and mental retardation services (KRS 210.410). KRS 210.420 sets some limits on state grants to regional programs.

To be eligible for a state grant the community health board or nonprofit corporation administering the program must submit annually to the commissioner its plan and budget for the next fiscal year. A program may not receive a grant unless it is approved by the Secretary (KRS 210.430). Funds may be withdrawn from any program which is not being administered according to its approved plan and budget.

Any city or county, under the provisions of KRS Chapter 210, may contribute its share for establishing the program from its general tax fund or by levying a special tax (KRS 210.460). At the present time, there are some fifteen regional programs in existence in Kentucky, covering all 120 counties.

### **County Health Boards**

By state law each county is required to have a county health board (KRS 212.020). In the majority of counties

the county health board should be composed of eleven persons -- seven medical professionals, an engineer and a lay person appointed by the Secretary of the Cabinet for Health Services, the county judge/executive and one member appointed by the fiscal court (KRS 212.020). Alternate methods for establishing a health board exist for urban-county governments (KRS 212.627) and counties containing a city of the second class (KRS 212.640). KRS 212.350 requires a joint city/county board of health in counties containing a first class city. The general powers and responsibilities of the board of health include the enforcement of state health laws and regulations, the adoption of local health regulations and the supervision of local health officials (KRS 212.230).

A county health department may be created, under KRS 212.040 to 212.130, to administer and enforce public health laws and to provide health services and facilities (KRS 212.240 - 212.245). County health departments are funded by county funds (KRS 212.040), by a special ad valorem public health tax (KRS 212.720), and by state aid (KRS 212.120).

Fiscal courts in counties within districts delineated by the Cabinet for Health Services may, by resolution, unite those counties into a district for the purpose of establishing a district health department. The resolution is in force for two years, awaiting the action of the other fiscal courts to unite in forming a district health department. Each fiscal court appropriates funds for its portion of the cost of the district department. The cost to the counties is based on the taxable property of each county as shown by assessments (KRS 212.820 to 212.930).

## **Disaster and Emergency Preparedness**

The General Assembly overhauled its emergency preparedness system in 1998. The Division of Emergency Management in the Department of Military Affairs was created to handle emergency situations. Local governments are required to create and support a local emergency management agency. Each shall develop, implement, and maintain a local comprehensive emergency management program, which shall include a local emergency operations plan, in accordance with Chapters 39A through 39F of the Kentucky Revised Statutes and executive branch requirements (HB 453, Section 29). Each does so in conjunction with the Kentucky Emergency Response Commission. The county judges/executive and the mayors of the cities, and the chief executives of other local governments shall each appoint a director of emergency management, or they may choose to jointly appoint a single director to represent all the local governments (HB 453, Section 30). The responsibilities of the executive directors are set out in HB 453, Section 31. In general, the privileges, duties, and responsibilities of local governments in relation to the Division of Emergency Management are set out in the newly created KRS Chapters 39A through 39F.

KRS Chapter 39E re-establishes the Kentucky Emergency Response Commission, which shall appoint local emergency planning committees from local officials and various elected and non-elected officers. The duties of the local committees are set out in HB 453, Section 68.

A rescue squad grant program was established to assist local rescue squads that are established in accordance with the provisions of KRS Chapter 39F in the execution of their duties. The rescue squads must comply with the requirements set out in KRS Chapter 39F in order to be considered for the grants.

## **Dog Warden**

According to KRS 258.195, each county must have a dog warden and dog pound. The Court of Appeals has interpreted this to be a ministerial duty rather than a discretionary duty. When the fiscal court appoints a dog warden and establishes a dog pound, it has discharged all duties imposed on it in relation to the so-called "dog law". The county is not liable for damages if the fiscal court fails



to act under the provisions of KRS 258.195; however, the individual members of the fiscal court may be liable.<sup>47</sup> Dog wardens and animal control officers may issue uniform citations to enforce the provisions of KRS Chapter 258 and local dog control ordinances.

In counties of small populations, fiscal courts may establish a joint dog pound. Or one or more counties acting jointly may take advantage of the facilities of suitable pounds already in operation by counties, cities, humane societies or other organizations or individuals. Fiscal courts may adopt and enforce regulations setting pound standards, name persons to serve as dog wardens, fix the salaries of the wardens and rule on other matters incidental to efficient operation of the dog pound (KRS 258.195).

## **County Roads**

County roads are public roads which have been accepted by the fiscal court and maintained by the county as a part of the county road system. Included in this system are the necessary bridges, culverts, sluices, drains, ditches, waterways, embankments and retaining walls (KRS 178.010). No county road may be established, be discontinued, or have its location changed unless due notice has been given under the provisions of KRS Chapter 178. Notices must be published pursuant to KRS Chapter 424 by the county road engineer (KRS 178.050). The public notice required by statute is jurisdictional and, until the notice is given, the fiscal court is without the power to proceed.<sup>48</sup> The provisions of KRS Chapter 178 relate solely to county roads and have no application to highways under the control of the Transportation Cabinet.<sup>49</sup>

**Work on City and Subdivision Streets.** A county may enter into an agreement with a city located in the county to perform work on the city's roads. Any costs of this work must be paid by the city (KRS 178.010). A county may also contract with a subdivision road district to maintain its roads, so long as the district agrees to pay the county's total cost (KRS 179.720). In addition, certain counties are required or permitted to maintain subdivision roads not contained in a district. KRS 179.470 should be reviewed to determine the responsibilities or options for any particular county.

**Condemnation for Road Purposes.** Whenever the fiscal court of any county deems it to be in the best interest of the county to open, establish, construct, alter or repair any public road, street, alley, ditch or bridge, and the fiscal court cannot contract with the landowner, the land may be condemned under KRS 416.110 (KRS 178.120). The county may also condemn land to acquire the right of way, including the right of way for temporary roads, when compensation cannot be fixed under KRS 416.100 (KRS 178.110). If the county takes land for a road without condemnation proceedings or without compensating the owner, it may be treated as a wrongful taking under the Constitution, Section 242. The owner may sue the county in an action which will be treated as an appeal from assessment legally made in a condemnation proceeding.<sup>50</sup> The fiscal court may condemn additional land adjacent to an existing road for future widening and

improvement when the county is unable to contract with the owners. The land may be condemned under the provisions of KRS 416.110 (KRS 178.125).

**Limited Access Highways.** The county, acting alone or in cooperation with any federal, state or local agency, is authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain and provide limited access facilities (KRS 177.230). The county may acquire property rights for limited access facilities in the same manner as it is authorized to acquire property for highways and streets (KRS 177.250). The court proceedings necessary to acquire property or property rights shall take precedence over all other cases not involving the public interest in all courts, to the end that the provision of limited access facilities may be expedited (KRS 177.260).

**Implied Dedication.** A county containing a city of the first class may be compelled to accept the dedication of a road used by the general public for at least fifteen years. Fifty-five percent of the abutting property owners must petition the fiscal court to compel the acceptance of the road into the county road system (KRS 178.400 to 178.425).

**Discontinuance of a Road.** The fiscal court may direct any county road to be discontinued. Notice must be published and signs must be posted at three public places in the vicinity of the road (KRS 178.070).

County roads that are abandoned and not maintained are deemed to be discontinued. A road reverts to the owner of the land to which it originally belonged unless it serves a public need, provides necessary access for a private person, or has been maintained and policed by the county or the state within a three-year period (KRS 178.116).

**Grade Crossings.** The procedure for ordering elimination of a grade crossing or change of existing overhead or underpass structure crossing a county road is outlined in KRS 178.355. If the fiscal court proposes to construct a new county road across an existing railroad or a railroad company proposes to construct a new railroad across a county road, the party proposing the construction must provide the other party with the plans and specifications of the project (KRS 178.360). All contracts let by the railroad company under this section must be

submitted to and approved by the county road engineer (KRS 178.365).

After the construction of any grade separation under this section, the county must maintain the roadway paving and sidewalks. If the road crosses the railroad by an overhead bridge or elevated structure, the county must maintain the bridge or structure and its approaches. If the road passes under the railroad tracks, the railroad company must maintain the structure supporting its tracks and its abutments (KRS 178.370).

**Bond Issues.** Upon the petition of 150 legal voters who are freeholders, the county judge/executive must hold a referendum to determine whether the majority of voters are in favor of a bond issue for hard surface roads (KRS 178.170).

The election may not be held until at least sixty days after the petition is received by the county judge/executive. The date of the petition is the date when it is filed with the county judge/executive; the petition and the signatures need not be dated.<sup>51</sup> The sheriff must advertise the election pursuant to KRS Chapter 424. The election may be held on a day other than the regular election day,<sup>52</sup> or it may be held on a regular election day.<sup>53</sup> When the road bonds have been duly voted, it becomes the duty of the fiscal court to issue the bonds in the manner provided by statute (KRS 178.170).

If the majority of voters are in favor of the bond issue, the fiscal court may proceed to sell bonds. Coupons must be attached and payable semiannually and the bonds must be in denominations of not less than \$100 nor more than \$1,000. The bonds must mature within forty years and may be redeemed within that time at the pleasure of the court. The bonds must not be sold at less than par value and accrued interest. The requirement that the bonds be sold for not less than par is mandatory (KRS 178.170).<sup>54</sup>

All money raised by the sale of bonds is to be used solely for the construction of hard surface roads (KRS 178.170). The power to issue bonds for public road purposes necessarily carries with it the power to build bridges which are a part of the road, and a vote for road bonds is in effect a vote for bonds for building bridges.

A bridge is nothing more than that part of a road which crosses a stream.<sup>55</sup>

**County Road Engineer.** The county judge/executive, with the consent of the fiscal court, may employ a county road engineer (KRS 179.020). If the fiscal court does not provide for a county road engineer, his duties will be performed by a county road supervisor (except insofar as they may be in conflict with KRS Chapter 322), who is appointed in the same manner as the county road engineer (KRS 179.020). The powers and duties of the county engineer are set forth in detail by KRS 179.070.

The county engineer may enter upon private lands which are:

(a) Adjacent to any public road, in order to open any existing ditch or drain or to dig a new ditch or drain.

(b) Adjacent to streams, to drive piles, throw up embankments or perform any work necessary to keep the stream within its proper channel.

(c) Adjacent to public roads which, during the time of high water, are subject to overflow from streams -- to remove obstructions preventing the free flow of water (KRS 179.300).

When the county engineer enters upon private lands under the provisions of KRS 179.300, he or she may agree with the owner, subject to the approval of the fiscal court, on the amount of the damages. The amount must be paid by the fiscal court out of the county road fund (KRS 179.310). If an amount cannot be agreed upon with the owner, the amount will be determined and paid pursuant to KRS 178.110.

**Bridges, Ferries and Tunnels.** All counties having second-class cities may purchase, construct or reconstruct bridges over or tunnels under any boundary line stream of this state (KRS 181.020). Bonds may be issued for the cost of construction or reconstruction of bridges or tunnels, including the necessary approaches and property (KRS 181.030). In lieu of levying a tax the county may collect tolls for the use of the bridge or tunnel. The tolls shall be kept in a special fund and used solely for paying the principal and interest on the bonds (KRS 181.040). When

enough tolls have been collected, after payment of the cost of collection and maintenance to fully retire the bonds, the bridge or tunnel is to be free of all toll charges (KRS 181.050).

Counties, in addition to municipalities, may adopt a code enforcement board by ordinance, according to 1996 House Bill 814, the Local Government Code Enforcement Board Act. This board is designed to issue remedial orders and impose civil fines as a method of enforcing the violation of an ordinance, including violations of zoning ordinances or regulations, when the ordinance is classified as a civil offense. A code enforcement board is composed of either three, five, or seven members. The initial appointments are staggered, with all subsequent appointments to be for three years. Members may succeed themselves and are appointed by the executive authority of the local government with approval by the local legislative body. In the case of a county in general that would be the county judge/executive and the fiscal court, respectively. The specific powers of the board are enumerated in KRS 65.8821. Violators of an ordinance are cited by a code enforcement officer (KRS 65.8825) and are allowed a hearing (KRS 65.8828). Appeals to the outcome of a hearing of the code enforcement board may be had in the district court of the county (KRS 65.8831). The entirety of the Local Government Code Enforcement Board Act is KRS 65.8801 to 65.8839.

### **Water Supply Plans**

The Natural Resources and Environmental Protection Cabinet must assist in the development of long-range water supply plans. These plans may be established for individual counties or for regions made up of several counties. A plan must assess existing resources and offer alternative methods of meeting water supply needs (KRS 151.114).

Counties, along with their municipalities and public water systems, must pay up to twenty percent of the cost of developing water supply plans. The rest of the cost is borne by the Natural Resources and Environmental Protection Cabinet, unless a county has delayed in adopting a plan until after July 15, 1996. Any county that has failed to receive Cabinet approval of its plan by that date must pay the full cost of plan development (KRS 151.118).

## **Waste Disposal**

State laws assign counties an important role in collecting and controlling solid waste. The county home rule statute allows fiscal courts to perform a number of functions, including "exclusive management of solid wastes by ordinance or contract or by both." (KRS 67.083).

Each county is authorized to develop a management system for solid waste generated within its boundaries (KRS 109.011). Counties may contract with one another in order to regionalize solid waste management (KRS 109.082).

KRS 109.011 expresses the intent of the General Assembly that the primary responsibility for adequate solid waste collection and disposal "shall rest with combinations of counties and waste management districts." Waste management districts are composed of single counties or groups of counties; their powers and duties are discussed in Chapter X.

**Universal Collection.** Every county must provide a universal collection program for all municipal solid waste generated within its borders. Generally speaking, "municipal solid waste" is waste generated by residences and businesses, but not by manufacturers or industry. The universal collection system must be established by ordinance and approved by the Natural Resources and Environmental Protection Cabinet. Each household or other solid waste generator must be given access to a collection system, except for commercial and industrial entities that dispose of their own waste (KRS 224.01-010 and 224.43-315).

Counties have several options for providing universal collection. They may offer door-to-door service, either performed by the counties themselves or by third parties under contract. They may allow residents to haul waste directly to convenience centers or transfer facilities that have received state approval. They may adopt other alternatives, as long as they can demonstrate to the Natural Resources and Environmental Protection Cabinet that the systems will be available to all citizens.

Each county providing universal collection must submit an annual report to the Cabinet and to any waste management district of which it is a member.

Even if counties enter into agreements for waste disposal with outside parties, they bear ultimate responsibility for their universal collection programs. The only exception to this rule involves cities. If a city of the first or second class has taken sole responsibility for developing its portion of a solid waste plan, the city is responsible for providing collection within its jurisdiction. If a city of any class has already contracted for the collection of solid waste before February 29, 1991, it may continue to do so.

If any county fails to provide a universal collection system, the state will refuse to endorse any of the county's projects that generate solid waste (KRS 224.43-315).

**Pick-Up Fees.** A county may collect solid waste pick-up fees that are at least three months overdue by combining these fees with property tax bills. The owner of the property must be given sixty days' notice before such a combined bill is mailed (KRS 109.310). Households that earn less than \$812 per month may be exempted from paying solid waste pick-up fees (KRS 109.320).

**Hazardous Waste.** Before an incinerator or landfill for the disposal of hazardous waste may be constructed, it must receive the approval of the fiscal court or governing body of the county or city in which it is proposed. A hearing must be held to allow public comment (KRS 224.40-310).

**State Assistance.** The state of Kentucky provides technical and financial assistance to counties, cities and waste management districts for the purpose of improving solid waste management area plans and conducting relevant studies (KRS 224.43-710 - 224.43-730). The Natural Resources and Environmental Protection Cabinet is required to offer assistance to local governments for household hazardous waste education and collection, as well as to help with disposal of surplus agricultural chemicals (KRS 224.10-610). Other state programs designed to assist local governments include the solid waste grant program (KRS 224A.280), the solid waste revolving fund (KRS 224A.270), and the Kentucky Recycling Brokerage Authority (KRS 154.12-202).



## **CHAPTER VII**

### **COUNTY OFFICIALS AND PERSONNEL**

#### **Elected County Officials**

The elected county officials are the sheriff, jailer, county clerk, coroner, county judge/executive, county surveyor, property valuation administrator, justices of the peace, county attorney, constable and, in some counties, county commissioners. Most of these offices are required by the Constitution and their qualifications and terms are set by the Constitution (Sections 99 and 100). Most county officials perform a wide variety of duties. The offices of county surveyor and constable have become outdated, however, and retain few duties.<sup>56</sup> The major duties of the more important county offices are summarized as follows:

##### **County Judge/Executive**

The judge/executive serves as a member and presiding officer of the fiscal court and acts as the county's chief executive and administrative official (Constitution, Section 124, KRS 67.040 and 67.710).

##### **Justices of the Peace and County Commissioners**

Depending on the form of the fiscal court in a county, justices of the peace, commonly referred to as magistrates, or county commissioners serve as members of that body and conduct the business of the county (Constitution, Section 144 and KRS 67.040).

##### **Sheriff**

The sheriff acts as a law enforcement official (KRS Chapter 70), collects real property taxes (KRS 134.140), provides court security (KRS 70.140) and performs various other duties.

##### **County Clerk**

County clerks have numerous responsibilities. They issue licenses, register voters and perform other election-related duties (KRS Chapters 116, 117, 118, 118A and 120), retain written certification of certain oaths of office (KRS 62.020), store various legal records and county

records (KRS 67.100 and 382.300), and prepare county tax bills (KRS 133.220). County clerks may serve as clerks of the fiscal court, except in counties containing a city of the first class (KRS 67.120).

### **Coroner**

The coroner investigates certain types of deaths and attempts to determine their cause (KRS 72.020 and 72.405 - 72.470).

### **Jailer**

The jailer has custody of the county jail and all persons committed to the jail (KRS 71.020). The jailer may be responsible for transporting prisoners to jail in another county (KRS 441.510) or, if another party is made responsible for transportation, the jailer acts as a court bailiff (KRS 71.050). The fiscal court may employ the jailer as superintendent of county buildings agreed upon by the jailer and the fiscal court. Compensation for services as superintendent of county buildings is in addition to compensation for performing the normal duties of the jailer, but the total compensation for duties as superintendent and as jailer may not exceed the maximum amount set for local officials in KRS 64.527 if the jailer does not run a full service jail, or the maximum set in KRS 64.5275 if the jailer does run a full service jail. In either case, the jailer shall not receive a salary of less than \$20,000 (KRS 67.130).

### **Property Valuation Administrator**

The property valuation administrator assesses or estimates the value of property for taxation purposes (KRS 132.420).

### **County Attorney**

The county attorney serves as the legal counsel for county government. He represents the county and county officials when they are named as parties in legal actions. The county attorney is a member of the unified and integrated prosecutorial system (KRS 15.725, 15.730 and 15.765). He or she also prosecutes violations of the criminal law within the jurisdiction of the district court (KRS 69.210).

## **Appointed County Officials**

Most county government positions are filled by appointment rather than by election. Non-elective positions include those of the members of county boards and commissions, administrative jobs and various other county personnel posts. In the past, specific statutory authority has been necessary to create a county office, to define its duties, and to establish methods of appointment and removal.

The enactment of the "home rule" statutes, however, has given the fiscal court more authority to establish appointive offices and set their duties (KRS 67.080) and to employ personnel in the performance of a number of public functions (KRS 67.083). Counties have also been given greater flexibility in setting procedures for the selection, supervision and discipline of county employees, through the development of county administrative codes.

### **Appointment of County Officials and Personnel**

Methods of appointment may vary according to the type of position to be filled. KRS 67.710 establishes slightly different procedures depending on whether a position is a county personnel post, an administrative post or membership on a county board or commission. Further, the manner of appointment to some positions may vary from county to county depending on the provisions of each county's administrative code.

**County Personnel.** The county judge/executive has the authority, with fiscal court approval, to appoint, supervise, suspend, and remove county personnel, unless state law provides otherwise (67.710).

**Boards, Commissions and Administrative Positions.** KRS 67.710 provides in part that the county judge/executive has the authority, "with the approval of the fiscal court, to make appointments to or remove members from such boards, commissions, and designated administrative positions as the fiscal court, charter, law or ordinance may create." In the case of Fiscal Court Commissioners of Jefferson County v. Jefferson County Judge/Executive et al., the Court of Appeals held that KRS 67.710 amended, by implication, all pre-existing statutes pertaining to appointments to boards,

commissions and administrative positions. The court further held that all appointments must be made by the county judge/executive, subject to fiscal court approval, despite noncompliance with the statutory provision that fiscal court approval be required by the county administrative code.<sup>57</sup> Since the Court of Appeals decision, KRS 67.710 has been amended to provide that in counties containing a city of the first class, the county judge/executive is required to appoint an equal number of members from each district to a board or commission. This requirement is relaxed if the appointment is subject to prior qualification or if nominations are to be submitted by groups or individuals.

**Constraints on Political Considerations in the Appointment of County Officials and Personnel.** The tenure of county employees is at the will of the county judge/executive and fiscal court. The term of employees ends when the term of the outgoing county judge/executive ends, and the new county judge/executive has the right to hire employees for his administration, subject to approval by the fiscal court. This interpretation of the Kentucky statutes has been recognized by the Attorney General (OAG 82-63) and a federal circuit court (Christian v. Belcher, 888 F. 2d 410, 6th Circuit 1989). Decisions by the U.S. Supreme Court have made it clear, however, that ordinary county employees may not be terminated on the basis of their political activities, because such action violates their constitutional rights to political expression under the first amendment.

At this time the cases determining what counties may or may not do with respect to employee tenure and political activity are Rutan v. Republican Party of Illinois, 110 S. Ct. 2729 (1990), which concluded that an employee in a county position for which party affiliation is not an appropriate job requirement may not be hired, fired, promoted, transferred, or recalled based upon expression of political opinions; and Branti v. Finkel, 100 S. Ct. 1287 (1980), which concluded that whether a position is political depends on whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.

These Supreme Court decisions have placed no restrictions on counties' management of their employees

with respect to job performance. In this arena county employment is still at the pleasure of the county judge/executive and the fiscal court. But the logical conclusion to be drawn is that, if an employee in a position which is not politically sensitive has been politically active, the county judge/executive should dismiss (or hire, promote, transfer or recall) the employee, and the fiscal court should approve the action, only if they can link their decision to job performance or potential.

It is not always clear which county employees or officials are in positions where partisan affiliation is an appropriate requirement for the effective performance of duties. In 1989, a federal circuit court determined in a case relating to a Kentucky county that political loyalty was not essential to performing responsibilities as a flood plain administrator and building inspector.<sup>58</sup> The Kentucky Court of Appeals has determined that the office of county treasurer vests its holder with discretionary power, considerable responsibility, confidence and supervisory authority. Therefore the appointment may be made on a political basis.<sup>59</sup> (This case was appealed to the Kentucky Supreme Court, which denied review. At the time this report was published, the case was under appeal to the U.S. Supreme Court.) Since there is some uncertainty about which county employees or officials may be appointed on a political basis, county judge/executives and fiscal courts should proceed with caution and seek the advice of the county attorney or other legal sources.

In a county that has created a deputy sheriff merit board (KRS 70.260-70.273), no deputy sheriff may be fired or disciplined for failure to make political contributions. After the first year of service, a deputy covered by a merit board must receive a written statement of reasons if he or she is dismissed by the sheriff. At a deputy's request, the board must review a dismissal or a reduction in pay. The board itself may remove or discipline a deputy sheriff only after a public hearing. In 1998, the General Assembly passed legislation which firmed up some operating procedures which merit boards must follow. Among these are more stringent posting requirements of rules issued by the board; and, regarding the contents of rules, the board must pass rules relative to the hiring, promotion, disciplining, and termination of deputy sheriffs. The General Assembly

also set out a more stringent procedure for the testing of deputy sheriffs for promotion (HB 52, Sections 10 and 11).

**TABLE XII**  
**COUNTY APPOINTIVE OFFICES**

<b>Office</b>	<b>KRS</b>	<b>Salary Fixed by Fiscal Court</b>	<b>Reimbursed for Expense</b>	<b>Remarks</b>
Auditor and Assistant Auditor	68.130	X		Pertains to counties containing first-class cities
Board of Adjustment	100.217		X	
County Board of Assessment Appeals	133.020			One member appointed by the county judge/ executive, one by the fiscal court, and one by the mayor of the largest city using the county roll. The comprehensive plan of an urban-county government may provide for a different system of appointment.
County Building Commission	67.450			
Building Inspector	67.410	X	X	
Extension Board	164.635		X	Board consists of six members and county judge.
Clerk of Fiscal Court	67.120	X		
Dog Warden	258.195	X		
Friend of the Court	403.090	X	X	Fiscal court may authorize appointment. The appointers are the circuit judges.
Housing Commission	80.420	X		Five commissioners may be appointed.
Planning Commission	100.141	X	X	See KRS 100.137 for planning commissions in counties of 300,000 or more.

Office	KRS	Salary Fixed by Fiscal Court	Reimbursed for Expense	Remarks
County Police Force Merit Board	78.410	X		Four members on the board. The county judge is an ex-officio member and may vote in the case of a tie vote.
County Public Improvements Finance Board	66.513			Pertains to fiscal courts in counties of 300,000 and imposes license fees for revenue other than or in addition to common schools.
Reapportionment Commissioners	67.045	X		Appointed to draw justice of the peace and county commissioners' district boundaries.
Recreation Board	97.030			See KRS 97.035 for joint recreation board.
Road Commission	178.180	X		
County Road Engineer	179.020	X		If the county does not employ a road engineer, the duties of this office, except insofar as they may be in conflict with KRS Ch. 322, shall be performed by the road supervisor.
Soil Conservation Representative	262.260			Board may invite local legislative body to select representative to consult with board.
County Treasurer	68.010	X		Appointed every four years at regular June term of fiscal courts.
Director of Welfare	98.310			Pertains to counties containing first-class cities.
Welfare Advisory Board	98.350			Pertains to counties containing first-class cities.





## **County Officials' Salaries**

Section 246 of the Constitution, as amended in 1949, limits the salary of elected county officials to \$7,200 per year. However, the General Assembly found that county judges/executive, county clerks, sheriffs, and jailers who operate a full service jail have duties that are coextensive with the Commonwealth. By such a declaration, the effective cap on their salaries, under Section 246 of the Constitution, is raised to \$12,000 in 1949 dollars. In the same vehicle of legislation, the General Assembly established a graduated pay scale for these officials, based upon the constitutional figures, which, of course, are subsequently adjusted to modern values, based upon the Consumer Price Index, as discussed later. The graduated pay scale is divided into nine groups, based upon county size, with the smallest group being counties with less than 5,000 people, and the largest group being counties exceeding 500,000 persons. Within each of the nine groups, there are provisions for increasing the official's salary one "step" per year served, to a maximum of four steps (HB 810, Section 1). The Kentucky Court of Appeals, now the Supreme Court, has held that the limit of either \$7,200 or \$12,000 may be adjusted to reflect changes in the purchasing power of the dollar; the salary of county officials is thus allowed to increase as the value of the dollar decreases.<sup>60</sup> Using 1949 as the base year, the Department for Local Government annually calculates the change in the Consumer Price Index, in order to adjust the compensation of county judges/executive, county clerks, sheriffs, justices of the peace, constables in counties with urban-county governments, county commissioners, coroners and jailers according to the purchasing power of the dollar (KRS 64.527). No jailer shall receive a salary of less than \$20,000 (KRS 441.245). The Attorney General has stated that payment of the maximum compensation is for full-time work, and adjustment should be made for part-time officials by computing a percentage of the maximum allowable salary, as established by the fiscal court (OAG 82-16, 82-348 and 86-69).

The Constitution further provides that county officials' compensation shall not be changed during their term of office (Sections 161 and 235). The court has interpreted an increase in salary to reflect change in the value of the dollar as not violative of the Constitutional prohibition on changing officials' compensation.<sup>61</sup>

Further, the Attorney General has opined that adjustments to account for changes in the purchasing power of the dollar are not changes in compensation in violation of Section 161 and 235 of the Constitution (OAG 82-16, 82-348 and 86-69).

Since KRS 64.527 authorizes the Department for Local Government to annually calculate the change in the Consumer Price Index to adjust the compensation of elected county officials, an unresolved question exists: In counties where an official does not receive the maximum allowable compensation in one year, may the fiscal court increase his or her salary to the newly calculated maximum the following year? When the Court ruled that officials' compensation could be adjusted to reflect purchasing power, KRS 64.527 was not yet enacted. Therefore, the courts have not ruled on whether KRS 64.527 authorizes a fiscal court to increase salaries to the maximum allowable amount when the previous year's salary was less than the maximum and an increase to the maximum allowable salary is greater than the adjustment of the consumer price index. The Attorney General has advised, however, that such salary increases are permissible (OAG 82-348).

The fiscal court is required to set the annual compensation of elected county officials, but the county clerk, county judge/executive and sheriff are exempted from this provision. KRS 64.535, as interpreted to allow for changes in the value of the dollar, permits these three officers to earn the maximum compensation allowed by Section 246 of the Constitution relative to the graduated pay scale set out in HB 810, Section 1. As fee officers, they are allowed to retain the fees they collect, as long as their compensation does not exceed the constitutional maximum. The statutes require the county judge/executive to be paid at least as much as the sheriff, the county clerk, or the jailer. In no event may the county judge/executive receive less than sixty percent of the maximum compensation allowed by Section 246 of the Constitution (KRS 67.705).

The fiscal court must determine the amount allowed for the deputies and assistants of elected county officials no later than the first Monday in May in the year in which the officials are elected. The officer determines the number of deputies and assistants to be hired and the amount to be paid to each within the overall limit set by the fiscal

court. The amount available for deputies' and assistants' salaries may be reviewed and adjusted no later than the first Monday in May of any successive year (KRS 64.530). The method of compensation of appointive county officers varies. Depending on the position, an appointive officer may receive a salary, reimbursement for expenses, or both. Table XII summarizes information on the manner of compensation of a number of appointive officers.

### **Expense Allowances**

Several of the elected county offices are granted lump sum expense allowances to help meet the costs of performing certain official duties. In most cases, the statutes that establish such allowances also stipulate that these funds will not be considered as compensation. Such provisions are usually directed at constitutional or statutory limits on the officeholders' compensation and are likely to be of no effect in regard to state or federal income tax laws.

The county judge/executive receives an annual expense allowance from the state of \$3,600, paid in quarterly installments of \$900, for performing duties and fulfilling responsibilities in the administration of the local county road program (KRS 67.722).

The county attorney receives a monthly expense allowance from the state of \$250, which is declared to be the minimum sum he would expend in the performance of his duties for the Commonwealth (KRS 15.765).

The sheriff receives a monthly expense allowance from the state of \$300 (KRS 70.170) for patrolling county roads (KRS 70.150) and inspecting dance halls and roadhouses (KRS 70.160).

The jailer receives a monthly expense allowance from the state of \$300, if he or she satisfactorily completes the basic jail staff training program and an annual training program. The allowance is discontinued if the jailer fails to satisfactorily complete the program (KRS 441.115).

The county clerk may receive a maximum expense allowance of \$3,600, payable from fees collected by the clerk. Clerks in counties of fewer than 75,000 residents are paid \$300 per month; in counties of 75,000 or more,

clerks are paid \$150 semi-monthly. If the amount of fees collected will not fund the full allowance, the fiscal court may pay the balance of the allowance (KRS 64.017).

The property valuation administrator receives an annual expense allowance of \$3,600, payable in monthly installments of \$300, if he or she completes a minimum of thirty classroom hours of professional instruction each year. A property valuation administrator who has been awarded the "senior Kentucky assessor" (SKA) professional designation must complete only fifteen classroom hours each year (KRS 132.597).

Justices of the peace and county commissioners may receive up to \$3,600 annually, payable from the county treasury, as an expense allowance for serving on the committees of the fiscal court (KRS 64.530).

### **Personal Bonds**

Tables XIII and XIV deal with the required personal bonds of appointed and elected county officials. The many details related to the execution of bond are found in KRS Chapter 62.

**TABLE XIII**  
**PERSONAL BONDS -- APPOINTED OFFICIALS**

<b>Office</b>	<b>KRS</b>	<b>Remarks</b>
County Treasurer	68.010	Must execute a bond with at least two reputable sureties to be approved by the fiscal court. Fiscal court may pay the bond premium from county funds.
Auditor and Assistant Auditor, Counties Containing City of the First Class	68.130	Each shall execute a bond with an incorporated surety company authorized and qualified to become surety on bonds in this state, or with two solvent and responsible individuals as surety. The bonds and surety to be approved by the fiscal court.
County Public Improvement Finance Board	66.513	Fiscal court may require bond of all trustees in such amounts as court deems proper.
Road Commissioners	178.180	Commissioners shall each give a bond approved by the county judge/executive.
Director of Welfare	98.310	Shall give a bond approved by the fiscal court and the fiscal court may require bonds for other employees within the welfare department.
County Building Commission	67.450	Each commissioner shall execute a bond to be approved by the county judge/executive.
Sanitation District Board of Trustees	220.150	Each director shall give a good and sufficient bond to be approved by the county judge/executive. The cost of the bond shall be paid by the district.
Water District Commissioners	74.020	Each commissioner shall execute a bond approved by the county judge/executive.

**TABLE XIV**  
**PERSONAL BONDS -- ELECTED OFFICIALS**

<b>Office</b>	<b>KRS</b>	<b>Remarks</b>
County Judge/Executive	67.720	The bond is a minimum of \$10,000 with surety approved by fiscal court or circuit judge. Fiscal court must pay the premium.
County Clerk	62.055	Executes a bond to the Commonwealth.
Property Valuation Administrator	132.400	Bond approved by Revenue Cabinet.
Sheriff	70.020	Bond for faithful performance of duties with sureties approved by fiscal court.
	134.230	Fiscal court may require bond.
Jailer	71.010	Executes a bond to the Commonwealth, in a minimum of \$10,000, approved by the fiscal court.
Coroner	72.010	Executes a bond in a minimum of \$10,000 and sureties, approved by fiscal court.
Constable	70.310	Bond in a minimum of \$10,000 and sureties, approved by fiscal court.
County Surveyor	73.010	Bond in a minimum of \$10,000 and sureties, approved by fiscal court.

#### **Retirement Plans of County Employees**

Employees in 115 counties participate in the County Employees Retirement System (CERS). Individual employees who are not members of a qualified retirement system participate in mandatory Social Security. In addition, all counties participate in the Medicare program.

#### **The County Employees Retirement System**

The County Employees Retirement System, a part of the Kentucky Retirement Systems, may cover employees of any county or political subdivision or instrumentality, including school boards, charter county governments and

urban-county governments (KRS 78.510). Member groups are also referred to as "corporations" and "agencies" in the statutes. When a county participates in the County Employees Retirement System, it may exclude hospitals and any other semi-independent agencies. An excluded agency may participate in the system as a separate agency (KRS 78.530).

To participate in the retirement system, an agency must adopt an appropriate order authorizing participation. KRS 78.530 authorizes the fiscal court or agency governing body to adopt such an order.

If a county does not participate, the sheriff and his or her employees, the county clerk and his or her employees, or current and former circuit clerks and deputy circuit clerks may participate as a separate agency (KRS 78.510).

Nonprofit organizations created by counties or elected county officers may participate in the system (KRS 78.510).

To participate, agencies must:

(a) Have their governing body enact a "resolution to participate";

(b) Supply information on those employees eligible to participate to the state and county retirement office; and

(c) Meet the requirements of the board of trustees (KRS 78.530).

**Termination.** If an agency fails to comply with the provisions of the retirement act, the board of trustees must notify the agency of its noncompliance. After such notification, the agency has ninety days to comply before its participation is terminated. An agency may appeal its termination to Franklin Circuit Court.

If a county's participation is terminated, the employees have the option to remain in the retirement system. If the employees stay in the system, they continue to make contributions and the county continues to make the employer's contribution (KRS 78.535).



**Eligible Membership.** The membership in the retirement system consists of:

(a) All persons who become employees of a participating county after the date the county first participates in the system and do not decline membership. Those who may decline membership include mayors and members of city legislative bodies, who may decline only prior to their participation; and city managers and other appointed local government executives who participate in a multi-state retirement system, who also may decline membership only prior to their participation;

(b) All persons who are employees of the county, whether in service or on authorized leave, on the date the county first participates and who elect to become members (KRS 78.540);

(c) Employees who elect membership after first rejecting membership on the participation date of the county (KRS 78.530).

A person's membership ceases:

(a) Upon withdrawal of his or her contributions at any time after termination of employment;

(b) Upon disability retirement;

(c) Upon service retirement;

(d) Upon death; or

(e) Upon termination of employment with prejudice (KRS 61.535).

**Contributions.** The member's contribution is five percent of his creditable compensation, and each employer is required to "pick up" the employees' contributions, so they are treated as employer contributions for federal tax purposes. Thus, the employee's contribution is not taxed as a portion of current gross income, but will be subject to federal income tax when the employee retires or leaves the system and the contributions are withdrawn (KRS 78.610).

The employer's contribution rate is calculated pursuant to KRS 61.565.

By the tenth of each month the treasurer must forward the previous month's employee contributions. Penalties or delinquent contributions may be recovered by action in Franklin Circuit Court, with interest at a rate adopted by the board, compounded annually (KRS 78.625). The interest shall begin to accrue after 20 days after the tenth of the month following the period reported.

If a participant of the CERS, or any state administered retirement system, is participating in the system on June 30, 2000, that person may obtain credit for subsequent service with a parted employer from the Commonwealth which is operating under KRS 163.475 by making a delayed contribution payment to the participant's retirement system. The payment is not "picked up" by the employer as set forth in KRS 61.560 (KRS 61.552).

**Consumer Price Index Adjustment.** Retired members of the CERS, as well as retired members of the Kentucky Employees Retirement System and the State Police Retirement System, receive an annual increase in their retirement payments based upon the increase in the consumer price index. This increment is capped at five percent (KRS 61.691).

### **Social Security**

Each county is authorized to submit a plan for Social Security coverage to the Cabinet for Human Resources. The plan may not cover those who are covered under the teachers' retirement system.

Plans submitted for approval must:

(a) Be in conformity with the requirements of the Social Security Act;

(b) Provide that all services which constitute employment be covered by the plan;

(c) Specify the source of funds necessary for payments;

(d) Provide that the methods of administration by the county be in conformity with methods approved by the Cabinet for Human Resources; and

(e) Provide that the county make reports required by the Cabinet for Human Resources (KRS 61.460).

KRS 61.460 authorizes those counties with plans approved by the Cabinet for Human Resources to deduct and pay into the Contribution Fund contributions due for wages paid prior to 1987 under the terms of the agreement. Failure to meet this responsibility does not relieve the county of the liability. Delinquent payments, with interest at the rate prescribed by Section 218(j) of the Social Security Act, may be recovered by action in the Franklin Circuit Court.

### **Health Insurance**

Counties, charter counties and urban-county governments and their agencies are authorized to establish and operate plans for the payment of disability, health maintenance organization coverage, or hospitalization benefits to their elected officers and employees and the immediate families of elected officers and employees.

Any county, charter county or urban-county government that is a contributing member of a state retirement system may participate in the health insurance coverage offered to state employees. If it does participate, the local government must stay in the plan for at least three consecutive years. If the local government then chooses to terminate its participation, it will be excluded from further participation for three years (KRS 79.080).

If the employees of the sheriff or the county clerk are not being provided with health insurance or health maintenance organization coverage by the county government, and if the office earns excess fees, the sheriff or county clerk may purchase health insurance or health maintenance organization coverage for employees of his or her office. The sheriff or county clerk may use a combination of excess fees and employee contributions to purchase the coverage (KRS 61.405). The Attorney General has advised that this separate coverage for employees of the sheriff or county clerk is unconstitutional, because it divides a single class, county employees, into two classes and then

arbitrarily assigns benefits to one class and not to the other (OAG 92-108).

### **County Police Force Merit System**

Any county may create a county police force merit system and board. The board's duties are to examine and classify applicants for the county police. It also makes rules and regulations governing the county police (KRS 78.405). If the fiscal court creates such a board, it must appropriate funds for reasonable and necessary expenses.

## **General Regulations**

The board consists of four members appointed by the county judge/executive with the approval of the fiscal court. The county judge/executive is an ex officio member of the board and votes only when there is a tie vote. Members of the county police department elect two patrolmen to the board solely for the purpose of deciding and voting on discipline cases (KRS 78.410).

All police officers and employees of the county police department, except probationary officers and employees and civilian employees covered by a collective bargaining agreement, are subject to the provisions of KRS Chapter 78 (KRS 78.425). Those personnel who were employed by the county police department prior to the establishment of the merit system are not required to be examined under the new rules.

The personnel covered by the merit system are forbidden to take part in certain political activities, as specified in KRS 78.435.

## **Disciplinary Action**

The police chief may remove, suspend, lay off, reduce in grade, or fine any officer or employee. Before such action is taken, the chief must furnish the individual with a statement of charges upon which the action is being taken. The individual has ten days in which he may file a written answer. No trial or examination of witness is required, except at the discretion of the chief. The board has the same disciplinary powers as the chief.

Citizens who make written charges of misconduct concerning the actions of any officer must present the charges to the police chief for investigation. The accuser may appeal the chief's decision to the county police merit board (KRS 78.445).

The police merit board must review all dismissals, suspensions, or fines ordered by the chief of police. If a majority of the board objects to the chief's actions, it may set aside the chief's orders or provide for other disciplinary measures. Rulings of the board may be appealed to the circuit court, where they must be given a new hearing (KRS 78.455).

### **Deputy Sheriff Merit Boards**

Any county may enact an ordinance creating a deputy sheriff merit board consisting of five members--two appointed by the county judge/executive (or by the chief executive officer if the county has an urban-county form of government), two appointed by the county sheriff, and one elected by the deputy sheriffs of the county. In a county that adopts such a board, no deputy may receive or solicit contributions or gifts for a candidate or a political party. No deputy may be disciplined or threatened for failing to make contributions for political purposes.

Except during the first year of employment, no deputy sheriff in a county with a merit board may be suspended or removed unless the sheriff furnishes a written statement of the reason. The merit board may review dismissals and reductions in pay at the request of deputies. It may also review the sheriff's investigations of citizens' complaints against deputies. The board may remove or discipline a deputy, but only after a hearing at which the deputy has the right to confront witnesses. In a county containing a city of the first class with a deputy sheriff merit board, a deputy's term of office will continue from sheriff to sheriff (KRS 70.030). As stated earlier in this chapter, the General Assembly added to the existing legislation and procedures regarding the operation of deputy sheriff merit boards. Individual merit boards must post the rules they pass, within certain time constraints, in various places accessible to the deputy sheriffs. And the rules themselves must at a minimum contain information and operating procedures prescribed by the legislature, which generally deal with hiring, promoting, firing and disciplining deputy sheriffs. Finally, the procedures for testing deputy sheriffs for advancement were specified (HB 52, Sections 10 and 11).

All deputy sheriffs employed by a county that adopts a merit board must complete, within one year following their hiring or the creation of the board, at least 400 hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received prior to the creation of the merit board may be used to satisfy all or part of this requirement (KRS 70.263). A deputy sheriff who provides court security

satisfies the training requirement by taking a course approved by the Administrative Office of the Courts.

No sheriff whose county has adopted a merit board may appoint a member of his or her immediate family to serve as a deputy. Members of the sheriff's immediate family are also prohibited from serving on a deputy sheriff merit board (KRS 70.030, 70.260-70.273).

### **County Fire Department**

Any county may create, by order of the fiscal court, a county fire department merit system (KRS 67.323). The system is governed by the provisions of KRS 78.410 to 78.460.

Any fiscal court may create a merit system for county policemen and fire fighters and establish a single merit board (KRS 67.325). Such boards are governed by the provisions of KRS 67.323 and KRS 78.410 to 78.460.

### **Veterans' Rights**

All county officers and employees who are members of the National Guard or any reserve unit must be granted annual military leave (KRS 61.396).

Any public employee who enlists or is drafted and is honorably discharged and makes application for re-employment within ninety days upon release from the military has the following rights:

(a) If physically qualified, the employee must be restored to his or her position, if it exists and is not held by someone with greater seniority; otherwise the employee must be given a position of like seniority and pay;

(b) If physically unqualified to perform the duties of the position by reason of disability sustained during military service, the employee must be placed in another position of the same seniority, status and pay (KRS 61.373).

Persons who are restored to positions must not be discharged without cause within one year after their restoration (KRS 61.375).

## **Code of Ethics**

On January 1, 1995, the governing body of every county adopted a code of ethics applying to all elected officials and to any appointed officials or employees specified in the code. The rules must cover at least the county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor and constable. School board members need not be covered.

The code must be adopted by ordinance and must set forth:

- a) Standards of conduct;
- b) Requirements for annual financial disclosure statements;
- c) A policy on employment of family members; and
- d) A person or group designated to enforce the code.

A code of ethics may be amended but may not be repealed. Whenever a code is adopted or amended, the county must notify the Department for Local Government and show proof of publication.

If a county fails to comply with the requirements regarding a code of ethics, state agencies must suspend delivery of services and payments (KRS 65.003).

The 1996 General Assembly added to the code the stipulation that candidates for city and county elective offices comply with financial disclosure requirements that are mandated in the code (KRS 65.003).





## CHAPTER VIII

### MERGED GOVERNMENT

#### Urban-County Government

In 1970 the General Assembly enacted legislation (portions of KRS Chapter 67A) which allows the voters of any county, except a county containing a city of the first class, to merge all units of city and county government, in order to facilitate the operation of local government and to prevent the duplication of government services.<sup>62</sup> (KRS 67A.010). The comprehensive plan for merging city and county governments into an urban-county may also provide for the corporate dissolution of special districts within the county (KRS 67A.050). The urban-county government that is the product of such a merger is neither a city nor a county but a new creature with powers and characteristics of both a city and a county. Only one Kentucky county has thus far adopted an urban-county form of government. The Lexington-Fayette urban-county government was approved by the voters in November of 1972 and became effective December 31, 1973.<sup>63</sup>

The 1982 General Assembly passed laws that permitted the merger of a city of the first class and the county in which it is located (KRS Chapter 67C). Proposals for the merger of Louisville and Jefferson County were offered to the voters in 1982 and 1983 and were defeated. KRS Chapter 67C was later repealed.

The constitutionality of the general provisions of KRS Chapter 67A and specific aspects of the Lexington-Fayette plan of merger have been challenged in the courts. In the case of Pinchback v. Stephens, the Kentucky Court of Appeals upheld the basic constitutionality of the urban-county government statutes against the argument that they constitute an unlawful delegation of legislative power and that the exclusion of cities of the first class violated the constitutional prohibition of special legislation.<sup>64</sup> Provisions of the Lexington-Fayette County urban-county charter in relation to constitutional and statutory provisions governing the structure of cities and counties were questioned in Holsclaw v. Stephens.<sup>65</sup> In essence the Court of Appeals held that in authorizing the merger of city and county governments the legislature

created a separate classification of local government with the combined powers of a county government and a city of the highest class in the county. At the same time, the court said, the urban-county form of government replaces all city and county government in the county except for certain constitutional requirements pertaining to county offices. Thus, a number of restrictions on the structure of government are avoided, and an urban-county is given a good deal of room in which to fashion its structure.

The powers of taxation of an urban-county government were questioned in a third court case. In Jacobs v. Lexington-Fayette Urban-County Government the Supreme Court of Kentucky held that an urban-county government is subject to tax limitations placed by Section 157 of the Constitution upon cities of the same population. The court also examined the urban-county government's practice of establishing service districts and levying different tax rates on real and personal property according to the level of government services provided. The court ruled that varying tax rates are permissible only as they apply to real property, as allowed by Section 172A of the Constitution and KRS 82.085.<sup>66</sup>

### **Formation**

The merger of counties with cities of the second through sixth classes is initiated by a petition process. Petitions bearing the signatures of a number of voters equal to five percent of those voting in the last general election are submitted from the county and from each city and filed with the county clerk. The filing of petitions directs the fiscal court and the legislative body of the largest city in the county to select a twenty-member commission to form a detailed plan for an urban-county government. Upon completion, the plan is advertised and submitted to the voters at a general election (KRS 67A.020). If approved by a majority of those voting in the entire county, the plan becomes effective at the next general election of county officials (KRS 67A.030).

### **Powers**

The latitude given to the urban-county government commission and drafting commission to devise a plan for merged government constitutes a grant of home rule powers, subject to the approval of the voters. This power is

checked to some extent by constitutional requirements; the county offices of county judge/executive, county clerk, sheriff, justice of the peace, constable, surveyor, coroner, county attorney and property valuation administrator may not be abolished. Nor may the fiscal court be abolished. The only power of the fiscal court in Kentucky's one urban-county government is simply to levy the ad valorem tax and such other taxes as may be provided by law for public schools.

Beyond the power to structure itself according to its needs, an urban-county government is authorized to exercise the constitutional and statutory powers of a county and of the city of the highest class in the county in effect on the date the new government becomes effective, or which may subsequently be authorized or imposed upon counties and cities of that class. Moreover, other powers may be authorized specifically for urban-county governments (KRS 67A.060). Furthermore, whatever rights, powers, privileges, immunities and responsibilities are granted to the county judge/executive in general statutes are considered a grant to the urban-county officer in whom the functions are vested under the comprehensive plan of the urban-county government, and otherwise to the chief executive officer of the urban-county government. Whatever rights, powers, privileges, immunities and responsibilities are granted to the fiscal court in general statutes are considered a grant to the legislative body of an urban-county government (KRS 67.712). The legislative body of an urban-county government is specifically empowered to enact and enforce tax, health, licensing, police, sanitary and other ordinances not in conflict with the State Constitution or statutes (KRS 67A.070). Urban-county governments created after 1987 are not bound by the pension and personnel policies applicable to the Lexington-Fayette Urban-County Government (KRS 67A.200, 67A.315).

### **City/County Compact**

The 1986 General Assembly enacted new sections of KRS Chapter 79 which require each city of the first class and the county containing that city to enter into a cooperative compact, thus providing a framework for cooperation between the city and county (KRS 79.310 - 79.330). In addition to requiring the cooperative compact, the 1986 legislation alters the procedures in first class cities and counties which adopt a compact for the following:

City annexation of unincorporated territory (KRS 81A.005 - 81A.010);

Members' terms of a joint city/county riverport authority (KRS 65.540 and 54.570), a metropolitan sewer district (KRS 76.030 and 76.040), an air pollution control board (KRS 77.065 and 77.070), a regional housing authority (KRS 80.450 and 80.480), a mass transit authority (KRS 96A.040 and 96A.070), a planning commission (KRS 100.157), a board of adjustments (KRS 100.217) and a local air board (KRS 183.132);

Creation of a joint city/county parks and recreation system (KRS 97.035);

Creation of a joint city/county library department (KRS 173.105); and

County provision for staff of the County Board of Health (KRS 212.350) and terms of members of the County Board of Health (KRS 212.380).

### **Charter County Government and Consolidation of Services**

The 1990 General Assembly created a new method of combining county and city operations into a single governing unit. The citizens of any county, other than an urban-county government or a county containing a city of the first class, may vote to merge all systems of county and city government into a charter county government. In 1994, the statutes on charter county governments were amended to allow the same procedures to be used for consolidating agencies, subdivisions, departments or subdistricts providing services for a city or county.

## **Adoption**

A charter county government or a consolidation of services may be adopted only after the appointment of a commission to study the question. The commission may be created in two ways: 1) the fiscal court (except in a county containing a city of the first class or an urban-county government) and a majority of all the cities in the county may adopt an ordinance, or 2) a petition, signed by a number of registered voters equal to at least twenty percent of the number of county residents voting in the most recent election, may be filed with the county clerk.

Within sixty days after the adoption of such an ordinance or petition, the fiscal court and the legislative body of each city in the county must appoint a commission of 20 to 40 citizens. The county appoints 55 percent of the members, and the cities in the county jointly appoint 45 percent. The county judge/executive serves as a voting member of the commission and presides over its meetings.

One of the duties of the commission is to develop a comprehensive plan. The plan must describe the form, structure, and powers of the government, the duties and powers of all officers, and the procedures by which the plan may be amended.

The comprehensive plan is submitted to the voters at a general election. If the plan receives a majority of votes, the commission must proceed to organize a charter county government or the county must provide for the consolidation of services (KRS 67.830).

Officials designated in the comprehensive plan are then chosen at the next regularly scheduled election. When the charter county government becomes effective, all debts, property, franchises, and rights of the existing county and municipal governments are assumed by the new government (KRS 67.840).

## **Powers and Duties of Charter County Governments**

A charter county government may exercise the constitutional and statutory rights and privileges granted a county, as well as those granted to the city of the highest class within the county (KRS 67.850). It may enact

tax, licensing, police, sanitary and other ordinances necessary for the health, education, and welfare of the county's inhabitants. Its power to tax or license the construction and maintenance of utilities is limited to the geographical area formerly occupied by incorporated cities, or to the area in which city-grade services are provided (KRS 67.855).

The territory of a charter county government may be divided into service districts, each of which may be taxed separately, according to the service it receives (KRS 67.860).

The comprehensive plan may provide for the dissolution of incorporated cities and special districts within the county. If these governmental units are dissolved, the charter county may designate for state and federal agencies those geographical areas, portions of roads, and segments of population that are to be deemed rural. The charter county government may be deemed a county. If so, the entire area and population of the county must be considered in calculating the distribution basis for state and federal assistance (KRS 67.845).

The statutes on charter county governments put restrictions on political appointments and activities. No person may be appointed to a position because of political service or affiliation, and no one may be dismissed or receive a reduction in pay because of any political opinion. No employee may be forced to participate in politics or to contribute to political funds (KRS 67.870).

Even if the comprehensive plan does not require the implementation of a merit or civil service system, the substantive and procedural rights of the employees of the former city and county governments must be protected (KRS 67.865).

A charter county government may provide a retirement system for its employees only by participating in the County Employees Retirement System (KRS 67.875).





## **CHAPTER IX**

### **SEMI-INDEPENDENT AUTHORITIES AND AGENCIES**

State law allows county government to create a number of semi-independent authorities to perform specific public functions. The degree of independence of such authorities in the management of their own affairs falls between that of a county department and a special district government. While county departments are totally controlled by the general county government and special districts are independent of and separate from county government, the governing body of the authority possesses some degree of independence but is subject to some supervision and control by county government.<sup>67</sup>

Several reasons have been cited for the creation of authorities. Like special districts, authorities may be used as a way of avoiding constitutional or statutory limits on local government debt. Thus authorities are often given the power to issue revenue bonds which may be retired from service charges or user fees. A second reason for semi-independent authorities in local government is their administrative flexibility. The governing body of an authority is generally given a degree of freedom to manage what is basically a commercial operation or enterprise, such as an airport or transportation system. Finally, since authorities are often the joint creation of two or more local governments, they are a means of providing some services that require the cooperative efforts of several units of local government.<sup>68</sup>

#### **Local Air Boards**

Any urban-county, city, county or any combination of cities or counties may establish an air board. The board is a body politic and corporate. Depending upon how the board is established, board members are appointed by the county judge/executive or a joint board is appointed by the county judge/executive and the mayor (KRS 183.132). In a city of the first class which has jointly established a local air board with the county containing the city, the board consists of eleven members, including the mayor, county judge/executive, three members appointed by the mayor, three members appointed by the county judge/executive, with fiscal court approval, two members from the county or contiguous counties, appointed by the

Governor, and one member selected from an incorporated neighborhood association, if there is one in the area (KRS 183.132).

Board members serve four-year terms without compensation, except reimbursement for reasonable expenses incurred in conducting board business.

The purpose of the board is to establish, maintain and operate airport and air navigation facilities.

The board has the power to:

(a) Fix rates for the use of ramps;

(b) Fix rates or charges by contract for commercial vendors, concessionaires or other persons for the use of the terminal or other facilities;

(c) Acquire by lease, purchase, gift or condemnation any real property for establishing, operating or expanding an airport;

(d) Make rules and regulations and ordinances to carry out its purpose; and

(e) Engage in activities to develop, promote, or encourage the use of airports or air navigation facilities under its control (KRS 183.133).

Table XV lists the ways airports may be financed.

**TABLE XV**  
**AIRPORT FINANCING**

<b>Government</b>	<b>Accomplished By</b>	<b>KRS</b>	<b>Remarks</b>
Local	Taxes or General Fund Appropriations	283.134	
	Bond Issue by Local Government	183.1134	
	Local Air Board Borrows on Anticipated Taxes	183.135	
	Local Air Board Issues Revenue Bonds	183.136	

State and Local	Share Basis	183.207	Local Airport Board must provide one-fourth of its share of project
	State Loan or Grant	183.764	
Federal, State	Share basis and Local	183.765	Grants also available
Federal and Local	Share basis	183.762	Grants also available

---

## **Transit Authorities**

### **Creation**

A county or a city and a county may establish a transit authority. The authority shall be a public body corporate and may exercise all the powers of a private corporation.

### **Purpose and Powers**

A transit authority is authorized to promote and develop mass transportation in its transit area and adjoining areas and has the power to carry out such purposes (KRS 96A.020).

### **Board Membership**

The composition of a transit authority's board depends on the way in which the authority was created:

(a) If the authority is created by a city or county, there will be an eight-member board.

(b) If the authority is created by two public bodies (e.g., city/county), there will be an eight-member board, four from each public body.

(c) If the authority is created by more than two public bodies, there will be an eight-member board plus one member for each public body in excess of two.

(d) In cases where established authorities permit other public bodies to join, the board membership may be enlarged with the consent of the governing bodies, by not more than one board member for each additional public body permitted to join.

Appointments in all four instances are made by the appointing authority of each public body. The board members may be removed for cause. Board members are allowed reasonable expenses incurred in the performance of their duties and may also be compensated if so provided by the fiscal court or city governing body creating the authority (KRS 96A.040).

### **Officers, Director, Employees**

Within sixty days after the appointment of its entire membership, the board elects from its members a chairman and a vice-chairman. The board may employ an executive director and a secretary-treasurer, neither of whom shall be board members and both of whom shall execute bonds. The board may also employ other necessary agents and employees (KRS 96A.070). In a first class city and the county containing the city which have a compact pursuant to KRS 79.310 in effect, the executive director or secretary/treasurer is appointed by the mayor and county judge/executive with fiscal court approval (KRS 96A.070).

### **Bonds**

A transit authority may issue revenue bonds in its own name, payable solely from its income and revenues (KRS 96A.120). The revenue and mortgage bonds plus interest are exempt from ad valorem and income taxes of the Commonwealth and all its political subdivisions. The properties, moneys, assets, revenues, or other income of an authority are exempt from all taxation, license fees, or charges of any kind imposed by the state, county, municipality, political subdivision, taxing district, or other public agency or body of this state (KRS 96A.140).

## **Riverport Authorities**

### **Creation**

One or more governmental units may, acting jointly and with the approval of the Transportation Cabinet, establish a six-member riverport authority. The Transportation Cabinet shall provide oversight on development activities involving riverport authorities and shall manage a study that will, at the least, include creating:

(a) Guidelines for ground transportation access to riverports;

(b) A model for determining the economic impact of riverports; and

(c) A blueprint for creating long-term funding mechanisms for riverports (KRS 65.520).

A riverport authority is a body politic and corporate with the usual corporate powers.

### **Purpose and Powers**

The purpose of the authority is to establish, maintain, and operate riverport and river navigation facilities and to expand them when necessary.

The authority has the power to:

(a) Establish and fix reasonable rates, charges and fees for the use of the riverport facilities;

(b) Fix rates, charges and fees for commercial vendors, concessionaires or other persons; and

(c) Acquire real property by contract, lease, purchase, option, gift or condemnation (KRS 65.530).

### **Board Membership**

If the authority is established by a county, the members are appointed by the county judge/executive with fiscal court approval. In joint authorities the members are appointed jointly by the mayors and county

judges/executive of the participating governmental units (KRS 65.540).

The authority members serve for four years and until their successors are appointed, except in a first-class city and the county containing the city which have entered into a compact pursuant to KRS 79.310 (KRS 65.540). They serve without compensation but are reimbursed for expenses incurred in the conduct of the authority's affairs (KRS 65.570).

### **Funding the Authority**

To meet the cost of administration, operation and maintenance:

(a) The local government units may appropriate funds or levy a property tax (KRS 65.580);

(b) The authority may borrow money on its own credit, in anticipation of a tax levy (KRS 65.590);

(c) The authority may issue revenue bonds (KRS 65.600).

Any authority may indemnify the United States against any claims for damages that may result by overflow of the river from its being improved by the United States (KRS 65.640).

### **Housing Authorities**

KRS Chapter 80 provides for the creation of various types of housing authorities. These agencies may be created by a city, a county, jointly by a city and county, or on a regional basis.

#### **Creation**

**City-County Housing Authority.** A city and contiguous county may form a city-county housing authority. If there are municipal or county housing authorities already in existence, the formation of a city-county authority must be preceded by a request from each authority to form a joint authority (KRS 80.262).

**Legal Effects of Creation of Authority.** KRS 80.264 provides for the transfer of real and personal property and the authority and responsibilities from the city and county authorities to the city-county authority.

**County.** Any fiscal court may, by resolution, declare that there is a need to create a housing authority. Such a declaration must be based on the findings prescribed in KRS 80.330 to 80.610 (KRS 80.320).

**Regional.** Two or more fiscal courts may form a regional housing authority in the same manner as a single-county housing authority. Any county which already has a housing authority but wishes to participate in the regional authority must have the written consent of those to whom the housing authority is financially indebted. Also, the county housing authority must adopt a resolution not to initiate any project within the county (KRS 80.320).

**Prerequisites for Creation of County or Regional Housing Authority.** No county or counties shall create a housing authority unless:

(a) Unsanitary or unsafe inhabited dwellings exist or there is a shortage of safe or sanitary dwellings for low-income persons; and

(b) These conditions can be best remedied through the exercise of a housing authority's power (KRS 80.380).

## **Board Membership**

**County.** The fiscal court appoints five members. Those members first appointed serve staggered terms and thereafter terms are for four years. All authority vacancies are filled by the governing body (KRS 80.420).

**City-County.** The authority is composed of eight members. The mayor and county judge/executive each appoint four members. No more than four members of the authority may be associated with the same political party (KRS 80.266).

**Regional.** The fiscal court of each county participating in the regional housing authority appoints a member. If an additional county or counties wish to participate in the regional program, the fiscal courts of such counties appoint a member. Conversely, when counties are excluded from the regional program, the members' offices for these counties are abolished.

If the regional housing authority consists of an even number of counties, the housing authority appoints an additional member whose term ends when the participation changes to an odd number of counties. The authority may appoint the successor of the additional authority member, provided his or her term of office begins during the appointing members' term of office (KRS 80.430).

A certificate of appointment must be filed with the county clerk and will be proper notice of the member's appointment. The member holds office until a successor is appointed.

The members may receive a salary or compensation based on meetings attended (KRS 80.440).

## **Powers**

A housing authority constitutes a public body corporate and politic and has the power necessary to carry out the provisions of KRS Chapter 80, including the power:

(a) To sue or be sued, make contracts, and amend and repeal bylaws;



(b) Within its area of operation, to prepare, carry out, acquire and lease housing developments and provide for the construction, reconstruction, improvements or repair of any housing development;

(c) To arrange or contract with any public or private agency;

(d) To lease or rent the development dwellings, revise rents, acquire real property by condemnation or eminent domain, and sell, lease, pledge, etc., any real property;

(e) To invest funds held in reserves or sinking funds in any property or securities in which savings banks may legally invest funds (KRS 80.500).

Power to Provide Housing for Farmers of Low Income. County, city-county, or regional housing authorities may borrow money, accept grants and otherwise exercise their powers to provide housing for farmers of low income (KRS 80.510). Farmers of low income are defined in KRS 80.520.

Cooperation Between Authorities. Any two or more authorities may exercise jointly or otherwise all their powers for the purpose of financing, planning, constructing, operating or contracting, with respect to housing in their area (KRS 80.590).

### **Industrial Development Authorities**

Any county or combination of two or more counties, or any city or cities acting jointly with any county or counties, may establish a nonprofit industrial development authority. The authority is a six-member body politic and corporate with the usual corporate attributes (KRS 152.830). The purpose, duties and powers of the authority are covered in KRS 152.840.

The authority may acquire funds for the purchase of property through:

(a) Appropriations from the local governmental unit(s) which created the authority;

(b) Borrowing on its credit in anticipation of appropriations or other income;

(c) Issuing revenue bonds under the terms, conditions and procedures set forth in KRS 103.200;

(d) Acquiring and developing land for industrial and commercial use, and issuing revenue bonds in connection therewith, under the terms and provisions of KRS Chapter 58 (KRS 152.900).

The title to all property acquired by the authority vests in the authority. All property acquired for development of industrial sites, parks and subdivisions is exempt from taxation to the same extent as other property used for public purposes. All revenues collected by the authority are also exempt from taxation (KRS 152.910).

### **Industrial Buildings**

#### **Bond Issue**

Any county may borrow money and issue negotiable bonds for the purpose of defraying the cost of acquiring or constructing any industrial building or pollution-control facility. The fiscal court must first pass a resolution, however, specifying the purpose, the amount of the bonds to be issued and the maximum rate of interest on the bonds. In addition, the resolution must provide that the undertaking satisfies the provisions of KRS Chapter 103 (KRS 103.210). KRS 103.220 to 103.240 establish terms and conditions for bond issues.

## **Lien of Bondholders**

A statutory mortgage lien exists upon the industrial building in favor of the bondholders. If any default occurs in payments, any court having jurisdiction of the action may appoint a receiver on behalf of the county (KRS 103.250).

The county is required to pledge the income and revenue from the industrial building to a separate fund to be used to pay the cost, maintenance, operation and depreciation of the building (KRS 103.260).

All properties, both real and personal, which a county may acquire are exempt from taxation, as is other public property, for as long as they are owned by the county (KRS 103.285).

## **Urban Renewal Agencies**

### **Creation**

The fiscal court of any county may declare by resolution that:

- (a) There are slum and blighted areas in the county;
- (b) There is a need to improve these areas through the powers, funds and duties conferred by KRS Chapter 99;
- (c) The exercise of such powers by an agency created by this statute would be an efficient approach (KRS 99.350).

When the resolution has been adopted, the county judge/executive is notified and appoints, with the approval of the fiscal court, five resident electors of the county as members of the urban renewal and community development agency. The first board serves a staggered term and from then on members are appointed for four years. Members hold office until their successors are appointed. The members elect their own chairman.

Members receive their actual and necessary expenses. Any other compensation must be paid exclusively from community funds.

The agency is required to file a detailed statement of revenue and expenditures with the fiscal court at such times as the fiscal court may prescribe.

The fiscal court may dissolve the agency at any time by a three-fifths majority (KRS 99.350).

### **Powers**

An urban renewal agency constitutes a public body corporate and politic and has the following powers:

(a) To sue and be sued, to make contracts and other instruments necessary to exercise its powers;

(b) To make and amend bylaws;

(c) To select and appoint officers and employees and determine their qualifications, duties and compensation;

(d) To purchase, lease, obtain option upon, acquire by gift, grant, bequest, or devise, any real or personal property; to acquire real property by the exercise of the power of eminent domain (see KRS 99.420);

(e) To borrow from and to accept loans from the federal government or any of its agencies; to invest any funds held in reserves;

(f) To develop any real property within its area of operation;

(g) To prepare plans for the improvement or rehabilitation of slum and blight areas;

(h) To obligate lessees or purchasers of land to use such land for the purpose designated in the development plan;

(i) To exercise all or any part or combination of the enumerated powers;

(j) To expend funds for the rehabilitation of private property within the agency's area of operation through loans or grants to the owners or occupants of such property (KRS 99.360).

Before adopting a development plan, urban renewal agencies must adhere to the requirements of KRS 99.370.

When the development plan has been adopted, no building permit or certificate of occupancy may be issued without the written approval of the agency (KRS 99.380).

#### **Cooperation by Public Bodies**

A public body may aid the agency in the following ways:

(a) Dedicate, sell, convey or lease any of its interests in property, grant easements, licenses or any other rights;

(b) Furnish public improvements in connection with a redevelopment project;

(c) Plan, zone or rezone;

(d) Furnish services to the agency;

(e) Close or demolish unsafe dwellings;

(f) Incur the entire expense of any public improvements (KRS 99.410).

**Bonds.** Any urban renewal agency has the power to issue revenue bonds and may also issue refunding bonds (KRS 99.430).

**Exercise of Agency Powers by the County or Housing Authority.** If the fiscal court determines it would be in the public interest for the powers of the agency to be exercised by the county or housing authority, the county or the authority has all the necessary rights, powers, duties and privileges, under KRS Chapter 99. Two or more counties may jointly exercise the powers granted under KRS Chapter 99 (KRS 99.490 and 99.500).

**Urban Renewal Projects.** Agencies are authorized to undertake urban renewal projects, providing they are undertaken in accordance with the plan for the area of the project. The power of the agency with respect to urban renewal is covered in KRS 99.550.

**Workable Program.** The fiscal court is authorized to prepare a workable program for utilizing appropriate private and public resources to eliminate the spread of slums, blight and deterioration (KRS 99.570).

### **Public Improvements**

Counties acting separately or jointly may acquire, construct or maintain public projects. To these ends a county may borrow money and issue revenue bonds. The resolution must describe the public project, the amount of revenue bonds, and the maximum rate of interest (KRS 58.020).

### **Prevailing Wages on Public Works**

Contractors and subcontractors are required to pay the prevailing wage to workers on public works construction projects that are estimated to cost more than \$250,000 (KRS 337.010).

The public authority advertising and awarding the contract must insert in the proposal and contract a stipulation to the effect that not less than the prevailing hourly rate of wages, as determined by the Secretary of the Labor Cabinet, will be paid to all laborers, workers, and mechanics performing work under the contract (KRS 337.510).

### **Community Improvement District**

A community improvement district may be created in any county containing a city of the first, second, third or fourth class for the purpose of erecting buildings and related facilities for any governmental unit or combination of governmental units. Procedures for the creation of community improvement districts are set forth in KRS 65.180 to 65.190. The district must include all of the county territory, including the area of incorporated cities, whether or not they have joined in the administration of the district (KRS 107.320).

### **Board of Commissioners**

The board initially consists of four members appointed by the county judge/executive, with the approval of the fiscal court. The board then appoints a chairman, who informs the mayor of each of the first, second, third and

fourth class cities that the district has been established and invites the cities to join in the administration of the board. A mayor of a first-class city is entitled to appoint four members and a mayor of a second, third or fourth class city is entitled to appoint one member.

### **Tax**

The board may request the fiscal court to levy an ad valorem tax at a rate not to exceed ten cents per \$100 of assessed property nor the amount necessary to amortize any bonds issued or projects proposed by the district. Taxes levied by a community improvement district are counted as a part of the county levy and must be included in the calculation of the maximum county tax rate.<sup>69</sup> This tax is collected in the same manner as county ad valorem taxes (KRS 107.350). The tax must be approved by the voters (KRS 107.360).

### **Powers**

The powers of the board are specified in KRS 107.310 to 107.500.

### **Joint Sewer Agencies**

A city, other than a city of the first class, may join with the county in which it is located, or a sanitation district, to form a joint sewer agency, as an alternative to establishing a metropolitan sewer district under KRS 76.010. The joint sewer agency has the powers granted a metropolitan sewer district by KRS 76.010-76-279, but they must be appropriate to the local needs of the county, city, and sanitation district (KRS 76.232).





## CHAPTER X

### SPECIAL DISTRICTS

Special districts are an important, if little known, form of local government. Though they are separate from county government, special districts are included in this publication because they provide vital services at the local level, particularly in unincorporated areas.

In Kentucky the term "special district" encompasses more than thirty different types of limited purpose units of local government which may be created under the Kentucky Revised Statutes. While most special districts are created by one of two uniform procedures, the choice depending on whether they have taxing power, they vary widely in the powers they possess, the functions they perform and the way they operate. Though an exact count is impossible, in the mid 1990's it was estimated that there were over 1,600 special districts in Kentucky. Special districts provide such important services as road building and upkeep, library services, sewage disposal, fire protection, water supply, and garbage disposal.

Thus to talk about special districts is really to talk about a number of different types of districts. For general purposes though, special districts may be defined as subdivisions of the state (other than counties or cities) that are created to perform a limited number of services within a limited geographical area.<sup>70</sup>

One reason for creating special districts has been the failure or inability of general purpose county government to provide all the services desired or needed by the citizens of a county or a particular portion of a county. Constitutional limits on debt or taxing power have, in some cases, kept general purpose government from providing certain services. Special districts with taxing or bonding power have been a way to get around such limits, because they are independent of county government and their taxes or bonded indebtedness do not count as a part of the county limit.

Other reasons frequently mentioned for the creation and existence of special districts are as follows:

- unwillingness of existing governments to assume a new function.

- desire for an independent district on the part of those desiring a particular function or service.

- desire of residents of unincorporated areas for only a few basic services which can be obtained through special districts.

- Psychological appeal of applying a specific tax to a specific function or service.

- desire to take a function or service "out of politics" or out of politics associated with the city halls or county courthouses.

- ease of initiation from a legal and political point of view.

In summary, residents of a given area may desire a particular function or service. They may find that existing governmental units are unwilling to perform or are incapable of performing the function, so they create special districts.

### **Criticisms of Special Districts**

The independence which, on the one hand, makes special districts a convenient means of getting around tax or debt limits has, on the other hand, been a source of criticism. Complaints have sometimes been raised that special districts are not accountable or that they create problems of coordination in local government. Specific criticisms include the lack of county government's control over the day-to-day operations of special districts and the lack of regular or complete reporting of district fiscal affairs.

The fiscal court is involved in approving the creation of special districts in the county. The county judge/executive generally makes appointments to the boards of directors for most types of districts. The judge/executive, according to one statute, may abolish or combine districts, with fiscal court approval (KRS 67.715). The county judge/executive also may require all special districts to make detailed annual financial reports to the fiscal court concerning their business and condition (KRS

67.710). Beyond these controls, the county government has little authority to regulate the day-to-day operation of most special districts. In fact, there are limits to the amount of control that county government could exercise without conflicting with the independent legal status of special districts.<sup>71</sup>

Critics also say that the use of special districts makes local government too complex. For example, it is not uncommon for a part of a county to be served by six or more different special districts, in addition to the general purpose city and county governments. This overlapping of governments is said to confuse both citizens and public officials. In addition, the statutes authorizing and governing special districts are sometimes said to create confusion. Each type of district has its own set of statutes, with different methods of administration and ways of conducting business. Both the overlapping of districts and the complexity of special district statutes have been said to discourage citizens' involvement in local government.

### **Creation of Special Districts**

Until recently, different methods were used to create each type of special district. The 1984 General Assembly enacted legislation that established uniform procedures for creating taxing (KRS 65.182 to 65.190) and non-taxing (KRS 65.810 to 65.830) special districts. In short, the uniform procedures call for the presentation of a petition to the fiscal court. The petition must be accompanied by information explaining why the district is needed, describing the area to be served and estimating the proposed district's revenue needs and sources. After the petition is received, notice is sent to various agencies, a public hearing is held and the fiscal court decides whether to create the district (KRS 65.182 and 65.810). For counties containing a city of the first class there is an alternate procedure for the creation of taxing districts. After the public hearing, the fiscal court must adopt a resolution to submit to the voters the question of whether the taxing district will be created (KRS 65.192). This alternate procedure may also be used to create a fire protection district or a volunteer fire department district in a county that does not contain a city of the first class (KRS 65.182).

## **Statutes on Special District Accountability**

The General Assembly has enacted a number of statutes aimed at identifying special districts and making them more accountable to the public and to county government.

### **Notice of Creation**

KRS 65.005 requires all new special districts to file certain information with the county clerk. This information includes the service area of the district, its statutory authority and the names and addresses of the members of the district's governing body and its officers. The county clerk forwards a copy of this information to the state local finance officer and the state local debt officer.

### **Annual Reports, Budgets and Audits**

Special districts must also prepare an annual budget (KRS 65.065). Requirements for preparation of financial statements and audits vary according to the size of the district (KRS 65.065), but must conform to generally accepted governmental auditing standards, as issued by the U. S. Comptroller General, plus additional procedures and reporting requirements at the Auditor of Public Accounts' discretion. The financial reporting requirements are as follows:

---

<b>Gross Receipts or Expenditures</b>	<b>Reporting Requirement</b>
Less than \$400,000	Annual financial statement, audit once every four years
More than \$400,000	Annual audits

---

Copies of the district budget and audit must be filed with the county judge/executive. No moneys shall be expended by the district until the budget is filed. Certain essential information about districts must be published in a county newspaper each year. This occurs in conjunction with the Uniform Financial Information Report. Standard forms for district information reports and budgets are supplied by the Department for Local Government to the county clerk (KRS 65.070).

## **Uniform Financial Information Report**

Each special district with ad valorem taxing powers is required to submit an annual uniform financial information report by July 1 to the Department for Local Government. The contents of this report are specified in KRS 65.910. The district may have its auditor, selected pursuant to KRS 65.065, prepare the uniform report at the same time the audit is prepared (KRS 65.905). In some instances, the final quarterly report filed in accordance with KRS 68.360(2) may serve as the uniform financial information report (KRS 65.905).

## **Appointment and Removal of District Board Members**

The statutes governing the different types of special districts include provisions for the appointment of a district board or governing body. While the details vary, the statutes normally establish the number of members of the board, provide for appointment by the county judge/executive, subject to fiscal court approval, and set the length of the board members' terms. KRS 65.008 provides that districts must notify the appointing authority no later than sixty days before a board member's term expires. Board members continue to serve until their successor is appointed and qualifies; if a successor is not appointed within sixty days of the expiration of a term, the incumbent member is automatically reappointed.

Grounds for removing special district board members -- for inefficiency, neglect of duty, malfeasance or conflict of interest -- are provided in KRS 65.007. The removal procedure calls for notice to the board member and a public hearing. The actual power to remove a board member rests with the officer who appointed the member and, if the appointing officer was the county judge/executive, the removal must be approved by the fiscal court. A board member who is removed from office under this procedure may appeal the action to the circuit court.

## **Fiscal Court Involvement**

KRS 65.009 permits a fiscal court to designate one of its members as an ex officio member of a special district board. The district must provide the fiscal court member with notice of all regular and special meetings of the

district's board. This statute merely provides a method of informing fiscal courts about special district actions. The ex officio member has no real power on the board: he may not vote on matters before the district board, is not counted as part of a quorum, and receives no compensation or reimbursement for attending meetings.

### **Special District Dissolution**

In some instances the statutes governing a particular type of district set up steps for dissolving such a district. KRS 65.166 to 65.176 cover dissolving those districts listed in KRS 65.164. One way of dissolving these districts is through a petition to the fiscal court. Under this method the fiscal court holds a public hearing and decides whether to dissolve the district (KRS 65.166). An alternate way of dissolving districts is by petition and referendum. Under this approach a petition seeking a referendum is submitted to the county clerk. If the petition satisfies statutory requirements, a referendum is held, allowing the voters to decide whether the district will continue to exist (KRS 65.170). Under either method of dissolution, the contractual obligations of the district must be satisfied before the district may be legally dissolved.

Table XVI lists the various types of special districts and their statutory authority. The remainder of this chapter is devoted to a more detailed look at several types of special districts.

**TABLE XVI**  
**SPECIAL DISTRICTS**  
**Districts Without the Power to Tax**

KRS 74.010--.416	Water Districts
KRS 76.005--.210	Metropolitan Water Districts
KRS 76.600--.640	Metropolitan Sewer Districts
KRS 76.241--.243	Sewer Construction Subdistricts
KRS 76.295--.420	Sewer Construction Districts
KRS 77.005--.305	Air Pollution Control Districts
KRS 80.262--.610	City-County Housing Authority
KRS 96A.010--.230	Mass Transit Authority
KRS 108.010--.075	Urban Services Districts
KRS 109.041(13)	Non-Taxing Waste Management Districts
KRS 147A.050--.120	Area Development Districts
KRS 154.50-301--.346	Industrial Development Authorities
KRS 184.010--.300	Public Road Districts

KRS 164.605--.675	Cooperative Extension Service Districts (OAG 83-264 says they have taxing authority, but the Trigg Circuit Court, in Civil Action Number 88-CI-082, says they do not)
KRS 262.010--.660	Soil Conservation Districts
KRS 262.850	Agriculture Districts
KRS 267.010--.990	Drainage Districts
KRS 273.405--.453	Community Action Agencies

**Districts With the Power to Levy Ad Valorem Taxes**

KRS 39.700--.780	Rescue Squad Taxing Districts
KRS 65.510--.650	Riverport Authority
KRS 75.010--.260	Fire Protection Districts
KRS 76.274--.279	Sanitation Tax Districts
KRS 91A.350--.390	Local Tourist and Convention Commission
KRS 104.450--.680	Flood Control Districts
KRS 107.310--.500	Community Improvement Districts
KRS 108.080--.180	Ambulance Service Districts
KRS 109.001--.320	Solid Waste Management Districts
KRS 147.610--.705	Area Planning Commissions
KRS 173.450--.650	Library Districts
KRS 173.710--.800	Library Districts
KRS 179.700--.735	Subdivision Road Districts
KRS 183.132--.160	Local Air Boards
KRS 210.370--.480	Mental Health-Mental Retardation Districts
KRS 212.720--.760	Public Health Districts
KRS 216.310--.360	Hospital Districts
KRS 220.010--.613	Sanitation Districts & Subdistricts
KRS 262.700--.990	Watershed Conservancy Districts
KRS 266.010--.990	Levee Districts
KRS 268.010--.990	Drainage, Reclamation & Levee Districts
KRS 269.100--.270	Drainage Taxing Districts

## **Fire Protection Districts**

KRS 75.010 to 75.260 authorize and provide guidelines for the creation of fire protection districts. A fire protection district is created by the fiscal court through petition to and public hearing before the fiscal court, using the procedures specified in KRS 65.182 (KRS 75.010). It may also be created by petition and voter referendum, following the procedures in KRS 65.192. In a county which does not contain a city of the first class, a referendum may be voted on only by qualified voters who live within the boundaries of the proposed district (KRS 65.182(10)).

According to KRS 75.020, with the ability to annex or strike off territory, a fire protection district, or volunteer fire department district, may join with other fire protection districts, or volunteer fire department districts. Notice is sent according to KRS Chapter 424 after the trustees of each district file a joint petition in the county clerk's office where the operations will be conducted, or where the greatest portion of the new district will lay. The districts may merge by order of the county judge/executive if 51 percent of the property owners in the area of the proposed new district do not protest by written petition to the county clerk. The county judge/executive may override this protest if he feels it is in the best interest of the district and territory. An aggrieved person may bring an action to the circuit court contesting the decision of the county judge/executive. If a merger occurs, the boundaries may not be altered again for a period of two years.

## **Taxation and State Aid**

Fire districts may levy a property tax not exceeding ten cents on each hundred dollars of assessed valuation. When the district is created by petition and public hearing, the tax is specified in the petition creating the district (75.040 and 65.182). Fire districts which meet training and equipment requirements receive from the state \$6,500 through June 30, 1999 and \$7,500 annually thereafter to assist them in purchasing equipment. The state also provides workers' compensation coverage to volunteer firefighters (KRS 95A.262).

## **Board of Trustees**



Fire districts are usually governed by a seven-member board of trustees. Three are appointed by the county judge/executive. Two are firefighters, elected by the firefighters, and two are property owners residing in the district, elected by the property owners (75.031). Any person owning real or personal property subject to the fire district tax may vote for the property owner trustees (OAG 74-782). KRS 65.192, which can be used in any county to establish a fire district by referendum, allows the petition setting up the district to specify the method of creating and appointing the governing body.

KRS 75.031 also sets forth qualifications for and procedures for removal from the board of trustees of fire department districts and volunteer fire department districts. In addition, it standardizes election times for the boards, which is the fourth Saturday of June between the hours of 11:00 a.m. and 2:00 p.m. Besides advertisement, pursuant to KRS 424.120, notification may also be sent by mail to the members of the district.

### **Ambulance Service**

If the territory or part of the territory of a district is not served by an ambulance district, or by city or county ambulance service, then the fire district may provide emergency ambulance service. The trustees of a district may also use tax funds to provide supplemental emergency medical services in districts which provide emergency ambulance service, if the mayor, or county judge/executive, as appropriate, certifies to the trustees that there is a need. District taxes may not be used for ambulance service until the tax year following the year the trustees authorize emergency ambulance service (KRS 75.040).

### **Mutual Aid Agreements**

The fire district may enter into contracts with other fire districts, volunteer departments, and municipalities within the county or in adjacent territory in a neighboring county to provide aid in fighting fires. Personnel and equipment operating within the contract area are deemed to be engaging in a governmental function (KRS 75.050). Personnel serving outside their jurisdiction but in another jurisdiction within their contract area shall be considered as serving within their own area (KRS 75.060).

### **Installation of Fire Hydrants**

The trustees of a fire district which is served by water in the public ways may cause the installation of fire hydrants, after making written contract for water service. They may apportion costs against property owners fronting the public ways and may establish liens on property for payment at 6% interest (KRS 75.080).

### **Law Enforcement Powers of Paid Firefighters**

Paid members of fire protection districts have the same powers of arrest given by law to sheriffs, and are declared conservators of the public peace, with duties to conserve the peace, enforce all laws and preserve order. They have the same right and power to arrest, search and seize as sheriffs, but shall at all times be subject to the orders of the county judge/executive while exercising law enforcement powers. They have no power to serve subpoenas, summonses, and notices in civil cases, and may charge no fees for performing law enforcement functions (KRS 75.160).

### **Access to Water and Access to Property**

The chief, assistant chief or highest officer present at a fire shall investigate the cause of a fire answered by the department. He or she may enter any building at any reasonable time to examine the building, if there is reason to believe it is in danger of fire. The chief and members of the fire department must have access to and use of all cisterns and fireplugs and the waterworks of private persons for the purpose of extinguishing fires, and has the power to examine these water supplies at any reasonable time, to see that they are in condition for use in case of fire. When a property owner's water is used in a fire, he or she may apply within ten days to the board of trustees for reimbursement in a reasonable amount (KRS 75.180).

### **Actions against Members or Employees of Districts**

Unless a fire chief or board of trustees has probable cause to believe a member or employee of a fire protection district has been guilty of conduct justifying dismissal or other punishment, no member or employee of a fire protection district may be reprimanded, dismissed, suspended, or reduced in grade or pay except for

inefficiency, misconduct, insubordination, or violation of law or of the rules adopted by the board of trustees. Charges must be preferred and a hearing conducted. Rules for this procedure are set out in KRS 75.130. KRS 75.140 allows members or employees of a fire protection district appellate options to the circuit court of the county in which the district is located and sets the procedures for doing so.

### **Audits and Legal Advice**

The board may employ an attorney to advise it. The county attorney must also advise and represent the board upon request (KRS 75.250). The board must prepare an annual audit or financial report, following the procedures of KRS 65.065.

### **Subdistricts**

A fire protection subdistrict may be formed to provide enhanced services to a specified area inside a fire district. The district's board of directors manages the affairs of the subdistrict and imposes an additional ad valorem tax on the property in the subdistrict. This tax, combined with the ad valorem tax imposed on the district as a whole, may not exceed the statutory limit of ten cents per \$100 of assessed value. Fire subdistrict taxes are indicated separately on the regular tax bill, and the fire district is to maintain separate accounts for each subdistrict. A subdistrict is formed by the fiscal court after petition and a public hearing (KRS 75.015).

### **Hospital Districts**

KRS 216.310 to 216.360 permit a county, or two or more counties, to form a hospital district. The Secretary for Health Services acts as the secretary of hospital districts.

Hospital districts may be created pursuant to KRS 65.182 and 216.320. Hospital districts are taxing districts, within the meaning of Section 157 of the Constitution. The special ad valorem tax imposed may not exceed ten cents on each \$100 of the assessed valuation of property in the county. A hospital district may be created with an ad valorem tax rate of zero (KRS 216.317). A district created in 1994 or later with an initial tax rate

of zero must receive fiscal court approval before raising the rate (KRS 216.336).

KRS 216.323 specifies the number of hospital district board members and how they are selected for a district. The board members must be residents of the county or district from which they are appointed. They receive no compensation but are reimbursed for actual expenses incurred in the performance of their duties. The governing power of the district is vested in the board, which has the power to carry out the purposes of KRS 216.310 to KRS 216.360.

### **Library Districts**

KRS Chapter 173 provides for library special districts in a county or in two or more adjacent counties. Library districts may be created as provided in KRS 65.182 and 173.470. They constitute taxing districts within the meaning of Section 157 of the Constitution (KRS 173.470). The tax rate of library districts must not exceed 20 cents on each \$100 of property assessed for local taxation (KRS 173.470, 173.720 and 173.790).

### **District Organization**

When a district is created, the fiscal courts of the participating counties notify the Department for Libraries and Archives, which recommends to the county judge/executive suitable persons to be appointed as board members from among those who petitioned for the district's creation. Twice as many are recommended as are needed and the county judge/executive selects from those recommended. The fiscal court must approve the recommendations (KRS 173.480 and 173.725). KRS 173.490 and 173.730 provide for staggered terms of the board members and for filling vacancies. Board members are not compensated for their services but are reimbursed for actual expenses necessarily incurred in the performance of their duties.

### **Duties and Powers of the Board**

The board must establish, equip and maintain libraries or contract with existing libraries to furnish service to the district. It may enter into agreements with other public agencies for the provision of additional library services. The establishment of a library or the

contractual arrangement with an existing library may not be implemented until the Department for Libraries and Archives gives its approval. The district is a corporate body, but it is guided by the regulations of the Department for Libraries and Archives (KRS 173.520 and 173.745).

### **Dissolution of Districts**

KRS 173.630 and 173.800 provide ways of dissolving library districts which were created pursuant to KRS 173.470 and 173.720 respectively. There is no provision in the statutes for dissolving a district created pursuant to KRS 65.182.

### **Soil Conservation**

The purpose of a soil and water conservation district is to conserve and develop all renewable natural resources within the district. To accomplish this goal the district has authorization to participate in programs and projects that promote conservation. The district is not entirely limited to the needs of agricultural lands, but is also interested in water needs for cities and industry, sites for airports, highways and housing developments (KRS 262.020).

### **Establishment of a District**

Any twenty-five landowners within the boundaries of the proposed district and within counties that maintain a full-time agricultural extension agent may file a petition with the state conservation commission requesting that a district be established (KRS 262.100).

Within thirty days after the petition is filed with the conservation commission, due notice must be given of a proposed hearing upon such questions as desirability, necessity, and boundaries of the district. In determining the boundaries, the commission must consider topography, soil composition, distribution of erosion and land-use practices (KRS 262.110). If the commission determines that there is a need for the district and defines its boundaries, it must also determine whether the operation of the district within these boundaries is practical and feasible. This determination is made by referendum; only landowners who are within the boundaries of the proposed district may vote (KRS 262.120). The commission pays all

expenses for the issuance of notices and supervises the conduct of the hearings and referendum. If the commission finds that the district is feasible, it appoints three supervisors to act with four elected supervisors. KRS 262.160 covers the procedure the three appointed supervisors must follow in applying to the Secretary of State's office on behalf of the district (KRS 262.150).

### **Election of Supervisors**

Nominating petitions must be filed with the county clerk to nominate district supervisors. Such petitions must be filed by at least the last date prescribed by the election law generally for filing certificates of nomination prior to a general election. A petition must not be accepted unless it is subscribed to by twenty-five or more resident voters within the district. Resident voters may sign more than one petition to nominate more than one candidate for supervisor (KRS 262.210).

The supervisors must be residents of the district they serve. They may be reimbursed for expenses incurred in the performance of their duties and may be paid per diem for attending meetings. The commission may remove a supervisor for neglect of duty or malfeasance in office (KRS 262.240).

### **Nature of the District**

The district constitutes a governmental subdivision of the state and a public body corporate. The governing body of the district is the board of supervisors. The board may sue and be sued in the name of the district and have perpetual succession unless terminated. Upon request from the board the fiscal court may levy a tax on all lands lying within the boundaries of the county. It is collected in the same manner as other county taxes (KRS 262.200).

### **Discontinuance of a District**

Any time after five years from the date of the organization of the district, 25 percent of the landowners may petition the state conservation commission to discontinue the district (KRS 262.530). Within sixty days after the petition is received the commission shall hold a referendum to decide the issue. The commission must publish the results of the referendum and determine whether the continued operation of the district is practical and

feasible. The commission's decision is based on the attitudes of the landowners, the number eligible to vote, the proportion of the total vote in favor of discontinuance, and the economic and social factors relevant to the decision (KRS 262.550). The commission may not entertain petitions for discontinuance of any district more often than once in five years.

### **Consolidation of Districts**

Two or more districts may consolidate. The former districts will cease to exist and the new district will contain the entirety of the former districts, and seven supervisors will remain in office. The Secretary of State must be notified by application containing various information for the dissolution of the old districts and the creation of the new one. The Secretary of State will issue to the board a certificate of consolidation (KRS 262.525).

### **Agriculture Districts**

The purpose of an agricultural district is to "conserve, protect and to encourage development and improvement of its (the state's) agricultural lands for the production of food and other agricultural products." To accomplish this goal the district may apply for federal farmland protection funds and accept easements (KRS 262.850).

### **Establishment of a District**

Any owner or owners of land may petition the local soil conservation board of supervisors to request creation of an agricultural district. Each proposed district must contain at least 250 contiguous acres, unless the area meets a minimum annual production performance established by the board and approved by the Soil and Water Conservation Commission. Upon receipt of the petition, the board of supervisors is required to notify the fiscal court and any local or regional planning or zoning body. After review, the board of supervisors submits a recommendation to the soil and water commission within 60 days. Upon approval by the commission, the area development district and the secretary of the Governor's cabinet are notified (KRS 262.850).

## **Nature of the District**

The local governing administrative body of the district is the conservation district board of supervisors. Land may be included in the district only with permission of the owner and once included may not be annexed. A farm may be withdrawn from the district at any time upon written notification to the district board of supervisors. Withdrawal of a farm resulting in reduction of total acres in the district to less than 250 acres does not cause decertification of the district. The board is required to notify the property valuation administrator of farms within the district for assessment purposes and whenever a farm is withdrawn from a district (KRS 262.850).



## **Watershed Conservancy District**

A subdistrict of a soil conservation district may be formed in a watershed area and be known as a watershed conservancy district. The purpose of such a district is to conserve water for usage, to control flooding and to control erosion (KRS 262.700). The land in such districts must be within a well-defined watershed.

If a proposed water district lies in more than one soil conservation district, the petition may be presented to the boards of supervisors of any one of the districts and the boards of all districts involved will act as a joint board (KRS 262.715).

Petitions to form watershed districts must be filed by at least twenty-five or more landowners, or, if less than fifty landowners are affected, a majority of the group (KRS 262.710). Within thirty days after the petition is filed, the board must give notice of a hearing for the establishment of the district. The notice shall be pursuant to KRS 262.010(4). The hearing is open to all interested parties; other lands may be included, or land in the proposed district may be excluded. These inclusions and exclusions must meet the requirements of KRS 262.705. If land not mentioned in the petition is to be included, the hearing shall be adjourned and a notice of a further hearing given throughout the entire area (KRS 262.720).

If the board decides there is a need for the district, a referendum is held within the proposed district. The board supervises the election. If the majority of voters are in favor of the district, it is established (KRS 262.730 and 262.735).

### **Board of Directors' Election**

Within thirty days after the creation of a watershed conservancy district, nominating petitions are filed with the board of supervisors for the election of five directors. If the watershed district lies within more than one soil and water conservation district, each additional district is entitled to elect three directors (KRS 262.740).

### **Powers of the Board of Directors**

Subject to the approval of the board of supervisors, the board of directors of a watershed district may:

(a) Levy an annual tax of not more than five mills per dollar of all real property within the district;

(b) Acquire land through purchase, gift, grant, devise or condemnation;

(c) Maintain such structures as are necessary for the function of the district; and

(d) Borrow money for the purchase of land, construction and maintenance in the district (KRS 262.745).

### **Assessments**

The district's taxes are collected by the sheriff, who receives a fee (not to exceed four percent) for collecting the tax (KRS 262.770).

Any landowner may petition a board of supervisors to have his or her land added to the watershed. The procedure is similar to the establishment of a district (KRS 262.780). Further, territory within an established district may petition to withdraw and form a new district (KRS 262.707). The procedure is governed by KRS 262.715 to KRS 262.735.

## **Water Districts**

### **Creation**

The approval of the Kentucky Public Service Commission must be obtained before a water district may be created (KRS 74.012). Following such approval, it may be created by the fiscal court, as provided in KRS 65.810, which establishes uniform procedures for creating non-taxing special districts.

### **Commissioners**

Water districts are managed by a board of commissioners appointed by the county judge/executive with the approval of the fiscal court (KRS 74.020).

## **Legal Services**

The county attorney acts as counsel to the commission, except when the commission has the permission of the county judge/executive to employ different counsel (KRS 74.030).

## **Superintendent**

The commission may appoint a superintendent who is subject to the orders of the commission. The superintendent may, with the approval of the commission, employ the necessary personnel for the operation of the district (KRS 74.040).

## **Procedure for Change of Districts**

The territorial limits of an established water district may be enlarged or diminished as follows:

(a) The commission files a petition with the county judge/executive describing the territory to be annexed or stricken and the reasons for the action.

(b) Notice of the petition is given and any resident of the district or proposed annexed territory has thirty days to file objections and exceptions.

(c) A hearing is held and, based on the hearing, the county judge/executive may allow or dismiss the proposed action. The concerned parties may appeal to the circuit court.

(d) If the district's area is diminished, assessments from the stricken territory will be removed from the roll and any assessments collected will be returned to the owners.

(e) Any deficits incurred that might impair the payment of bonded indebtedness may be paid out of the district's general fund (KRS 74.110).

A water district has no authority to acquire any part of an existing water system that lies outside the district's boundaries; KRS 74.110 does not authorize such expansion.<sup>72</sup>

## **Bonds and Assessments**

The water district may issue bonds. A bond issue may not exceed fifty years. Bonds are negotiable and not subject to taxation. If any officer whose signature or counter-signature appears on the bonds ceases to be an officer, his or her signature remains valid (KRS 74.290). The district may also issue bonds payable solely from revenues derived from the operation of the system or payable partly from revenues and partly from assessments (KRS 74.370).

## **Surcharge for Purposes of Expansion**

The water district may finance all or part of an expansion of its system by adding a temporary surcharge to the rates charged for service. The district must develop a plan and timetable for the expansion, which must begin within five years after the surcharge is implemented. If the expansion is not begun within this time period, the money must be returned, with interest, to the water district customers (KRS 74.395).

## **Federally Financed Projects**

A water district is generally subject to Public Service Commission approval of its construction projects, but not when the project is financed in whole or in part by the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development. Agreements with a federal agency must, however, be submitted to the Public Service Commission for review and comment. The commission may not prohibit the inclusion of costs or the use of accounting procedures in rate setting, if the costs or procedures are required as a condition of federal financing, nor may the commission deny the use of a surcharge for the cost of system extensions, if a federal agency approves the surcharge (KRS 278.023).

## **Planning for Fire Protection**

The commissioners of a water district may consider the installation of fire hydrants on new or extended water lines. They shall not eliminate fire hydrants from new or extended water lines unless they determine, after study, that hydrant installation is not feasible. If the water district has the capacity to supply adequate water for fire

hydrants, it must require of a real estate developer who has not included hydrants in his or her plan an analysis of why hydrant installation is not feasible (KRS 74.415).

### **Merger**

Water districts may be merged by the Public Service Commission (KRS 74.361) or by concurrent action of the boards of directors of the districts (KRS 74.363). If two or more water districts in a single county merge, the board membership of the resulting district will be between three and seven members, as the county judge/executive determines. If the merger is between water districts in different counties, the resulting board shall be a minimum of six, with representation of each merging district sent by the county judge/executive of each represented county (KRS 74.363).

### **Discontinuance**

With the approval of the Public Service Commission, a water district may be discontinued at any time. Steps for district discontinuance call for fifty percent of the freeholders within the district to petition the county judge/executive to discontinue the district. Notice is given pursuant to KRS Chapter 424 and the county judge/executive holds a hearing. If the county judge/executive determines after the hearing that discontinuance is in the best interest of the district residents, the district is dissolved by the county judge/executive's order (KRS 74.367).

### **Joint Operation of Water Sources**

Water districts may join together with other water districts and with cities to operate water supply sources. They must follow the procedures set forth in KRS 74.420 to 74.520.

### **Water Project Interest Rate Buy Down Fund**

Government agencies may receive financial assistance from this fund for the construction of publicly-owned water supply projects located in rural areas. A loan is secured from a bank and an annual grant is made for the amount of interest calculated at four percent to the governmental agency in addition to the loan for the life of the loan

(KRS 42.200). Although this is not directly tied with a water district, it should be considered a valuable option for the procurement of potable water in rural areas.

### **Levee Districts**

In counties of less than 200,000 population, the fiscal court may create a levee district, as provided in KRS 65.182 (KRS 266.010). When a levee district is established, the county judge/executive appoints, subject to the approval of the fiscal court, five resident landowners as levee commissioners. The board is a body politic with corporate status and may do anything authorized by law pertaining to levees (KRS 266.100).

### **Board's Power to Tax**

The board may levy and collect an annual tax not to exceed 50 cents on each \$100 on all property protected by the levee (KRS 266.150).

Additional assessments are authorized under the drainage law when the board needs funds to reconstruct, repair or maintain any public levee constructed under laws other than the general state laws pertaining to drainage lands (KRS 266.170).

The management of the levee district is under the board of levee commissioners rather than the board of drainage commissioners.

### **Drainage Districts**

#### **Drainage Act of 1912**

Any county may make improvements in swampy or overflow land through the creation of a drainage district, as provided in KRS 65.810 and 267.020.

**Taxes.** Land in the district is assessed according to classifications based on the benefits derived from the improvements (KRS 267.290).

**Bonds.** When the total assessment exceeds the average of twenty-five cents per acre on all the land assessed, the board is authorized to issue bonds. Notice is given pursuant to KRS Chapter 424 (KRS 267.320).

**Discontinuance.** At any time a majority in number and amount of those assessed for the maintenance of any improvement may petition the county judge/executive for the discontinuance of the improvement. A hearing must be held, and if no valid reason is shown against the discontinuance of the improvement, the county judge/executive must enter an order discontinuing it (KRS 267.570).

#### **Drainage Act of 1918**

Any county may establish, organize, and provide for the operation and maintenance of drainage, levee and reclamation districts under the provisions of KRS 65.182 and 268.020.

**Election of the Board.** The county judge/executive divides the district into three precincts as nearly equal as practical. Then a temporary secretary gives twenty-day notice pursuant to KRS Chapter 424. The landowners vote by filing a written designation of their choice, indicating the number and the assessed value of the acres they own or the benefits assessed against the land. Each acre or each \$100 or fraction thereof counts as one vote. The votes are filed with the county judge/executive by the first Monday in April (KRS 268.160).

The board consists of three commissioners. No one except a landowner in the precinct for which he or she acts is eligible for this office (KRS 268.160).

**Taxes.** The board is authorized to levy a uniform tax of not more than fifty cents an acre on district land. Delinquent taxes are turned over to the sheriff for collection and bear the same penalty as general state and county taxes (KRS 268.180).

**Bonds.** The board may issue bonds not to exceed ninety percent of the total amount of the minimum district assessment. The bonds must be in denominations of not less than \$100 and bearing interest payable at least annually from the date of issue (KRS 268.370).

**Discontinuance.** In counties containing not more than one district established under KRS Chapter 268 or the 1918 Act, twenty-five percent of the landowners or the owners of twenty-five percent of the land may petition the county judge/executive for discontinuance (KRS 268.650).

### **Swampland Improvement Districts**

Any county may remove ponds, pools or swamp marshes or reclaim swampland that may cause sickness in the county. The cost is paid out of the county levy or by taxation of the property. The fiscal court may acquire any land for such a project through contract or condemnation (KRS 269.070). In the improvement of such land, the county may establish a taxing district with the approval of the voters in the proposed district (KRS 269.100).

### **Surface Drainage Districts**



When the fiscal court requests it, a county judge/executive is authorized to establish a county-wide surface drainage district, including municipalities. The cost of rights of way, construction and maintenance are paid by the fiscal court out of the annual county tax levy (KRS 269.270). The administration of the district is exclusively by the fiscal court.

### **Water Resources, Activities and Restrictions**

Conservation, development and proper use of water resources have become of vital importance, as a result of population expansion and concentration, industrial growth, technological advances, and the increasing demands of industrial, municipal and recreational uses. Thus, the Cabinet for Natural Resources and Environmental Protection has been given the authority to regulate many aspects of the activities of flood control districts, water districts, levee districts, and all other units of local governments as they affect public water in the Commonwealth (KRS 151.110).

**Withdrawal of Water.** No person, business, industry or political subdivision has the right to withdraw public water at more than specified volumes unless a permit has been granted by the Division of Water (KRS 151.140 and 401 KAR 4:010). Those authorized to withdraw water must keep records and supply the division with reports (KRS 151.160 and 401 KAR 4:010). If accurate records are not kept or water is withdrawn without a permit, the offenders may be fined not more than \$1,000 and may be enjoined from continuing the violation. Each day the violation occurs or continues constitutes a separate offense (KRS 151.990).

**Plans for Dams and Levees.** No city, county or other political subdivision may commence construction, reconstruction or alterations on any dam or other such obstruction without first submitting the plans and specifications to the Division of Water (KRS 151.250). Any political subdivision starting work on such a project without a permit or before a permit is issued can be punished by penalties provided in KRS 151.990.

**Kentucky Infrastructure Authority.** The Kentucky Infrastructure Authority was created in 1988 to replace the Kentucky Pollution Abatement and Water Resources Finance Authority. The Authority is attached to the Finance and

Administration Cabinet for administrative purposes. The Authority is able to make loans and grants to local governments, including counties, for infrastructure projects. These projects include water treatment works, distribution facilities, water resources projects, solid waste projects, dams, stormwater control and treatment systems, gas or electric utilities, and other public utilities or public service projects which would enhance economic development opportunities (KRS 224A.011).

The Authority has two revolving funds from which to assist counties with their water and other infrastructure projects. The first is the federally assisted wastewater revolving fund. This fund receives capitalization grants from the federal government and is dedicated to assisting local governments in the construction of publicly owned water treatment works, and the development and implementation of water conservation and management plans and programs. Loans to counties may be made from this fund at market or below market rates (KRS 224A.111).

The second fund is the infrastructure revolving fund. This fund may be used for infrastructure projects when a county is unable to obtain financing from its own resources, from commercial credit at reasonable rates, or from other public grants or loans, including the federally assisted wastewater revolving fund. Loans are available at market or below market rates for up to thirty years. Grants are available when both hardship and extreme health hazard exist. This fund may also be used to supplement loans from the federally assisted wastewater revolving fund (KRS 224A.112).

Counties interested in obtaining assistance from either the federally assisted wastewater revolving fund or the infrastructure revolving fund can initiate their inquiries through their area development district office. The wastewater revolving fund is administered by the Division of Water in the Natural Resources and Environmental Protection Cabinet. The infrastructure revolving fund is administered by the Department for Local Government.

### **Public Health Taxing Districts**

Under the provisions of KRS 212.720 and KRS 212.750, public health taxing districts have been created in all

counties. These districts constitute taxing districts within the meaning of Section 157 of the Kentucky Constitution.

#### **Imposition of Special Ad Valorem Public Health Tax**

If, after the establishment of the public health taxing district, it is determined by the local health board that the county appropriations are not sufficient to meet local health needs, the board, with the approval of the Cabinet for Health Services, may impose by resolution an ad valorem public health tax in an amount it deems sufficient. This amount may not, however, exceed the maximum approved by the electorate (under KRS 212.720). When the fiscal court receives a copy of the resolution, the tax must be included in the next county ad valorem levy (KRS 212.725).

#### **Public Health Taxing Districts by General Assembly**

In 1968 the General Assembly created a public health taxing district in every county that had a health department but had not established a taxing district. The law excluded counties with first-class cities (KRS 212.750). The boards of health of those tax districts created under KRS 212.750 may, if the appropriations are not sufficient, request the fiscal court to impose a special ad valorem tax in an amount it deems sufficient. The fiscal court may levy the special ad valorem tax. The tax may not be in excess of ten cents per \$100 (KRS 212.755).

#### **Air Pollution Control Districts**

Before an air pollution control district may be formed, the fiscal court must declare that there is a need for the district. If the county contains a first- or second-class city it is necessary for the city, after the county's resolution has been made, to declare that there is a need for the air pollution control district in the city (KRS 77.015). Prior to the declarations, the city and county must hold separate public hearings to determine whether there is a need for the district (KRS 77.020). The resolution and ordinance declaring the need for the district are sufficient to establish the district and no further requirement is necessary, if the conditions which are enumerated in KRS 77.030 and KRS 77.035 exist (KRS 77.055). The resolution of the fiscal court and the city,

when duly certified, are admissible in evidence in any suit, action or proceeding (KRS 77.045).

The general powers of the air pollution control districts are:

(a) The power to sue and be sued, contract and be contracted with and make rules and regulations;

(b) The power to take by grant, purchase, gift, devise or lease, hold, enjoy or to lease or dispose of real property (KRS 77.060).

### **Board Members**

The members of the fiscal court are ex officio officers of the board. All county officers, their assistants, clerks, deputies and all other county employees must perform the same duties for the district they perform for the county, without additional compensation (KRS 77.065). This applies to counties containing first-class cities operating under a compact pursuant to KRS 79.310 as well.

In counties containing first or second class cities the board consists of seven members. Three members are appointed by the county judge/executive with the fiscal court's approval, and four members are appointed by the mayor, with the approval of the local legislative body. The board members must be freeholders and residents of the county or city. The county judge/executive or mayor may remove his appointees for cause (KRS 77.070). The board members serve without compensation but may recover expenses incurred in the performance of their duties (KRS 77.075).

### **Hearing Board**

The air pollution control board appoints a three-member hearing board, consisting of two lawyers and one engineer who are freeholders and district residents. Hearing board members may not be members of the air pollution control board. The lawyers may not be employed by the district, a municipal corporation or a political subdivision of the Commonwealth. The engineer may be employed by a political subdivision or municipal corporation of the Commonwealth. Any member of the hearing board may be removed for cause (KRS 77.105). The hearing

board selects its own chairman and may hold a hearing *en banc* or may designate one or two of its members to hold a hearing (KRS 77.285). The chairman of the hearing board is authorized to subpoena witnesses and materials which may be pertinent to the hearings (KRS 77.290).

### **State Oversight**

The Cabinet for Natural Resources and Environmental Protection has concurrent jurisdiction with the county air pollution control districts in administration and enforcement of local standards. The air pollution control district is forbidden to adopt regulations or standards less stringent than a regulation or standard adopted by the cabinet and must submit prepared regulations and standards to the cabinet for prior concurrence.

Periodic reports must be made to the cabinet as provided for by regulation. If the cabinet determines, after a hearing with notice, that a district program is not being administered in accordance with the statutes and regulations of the cabinet or the district, the grant of authority may be suspended, revoked, or modified by the cabinet (KRS 224.20-130).

### **Sewer Districts**

#### **Joint Metropolitan Sewer Districts**

Counties having first- or second-class cities may create a joint metropolitan sewer district. It is a public corporate body and political subdivision, with the power to adopt, use and alter at its pleasure a corporate seal; sue and be sued; contract and be contracted with; and act as a natural person within the purview of KRS Chapter 76 (KRS 76.010).

#### **Board Members**

The district board consists of seven members, three appointed by the county judge/executive, with the approval of the fiscal court, and four appointed by the mayor, subject to the approval of the city's legislative body. In counties containing a city of the first class the board consists of eight members, with the additional member appointed by the county judge/executive. Not more than four board members, or five in counties containing a city

of the first class, may be affiliated with the same political party. Each board member must be at least twenty-five years of age and a resident of the city or county for at least three years. The county judge/executive or mayor may remove for cause any member whom he or she has appointed. The board members receive \$75 for each board meeting and \$50 for each committee meeting attended, but the compensation may not exceed \$1,800 during a fiscal year, or be for more than twenty-four board meetings or twenty-eight committee meetings held during the fiscal year (KRS 76.030). A chairman and vice-chairman are elected by the board in July of each year. These two officials must be of different political party affiliation (KRS 76.060).

The board must employ a secretary-treasurer and chief engineer, both of whom must execute a bond. The board is authorized to fix the salaries and compensation of its officers and employees, but in line with those paid by the county and city for similar services (KRS 76.060).

### **Powers**

The district is empowered to:

(a) have jurisdiction, control, possession and supervision of existing sewer and drainage systems of first- or second-class cities;

(b) prepare plans and designs of sewer systems;

(c) construct additions to district facilities;

(d) establish, construct, operate, and maintain sewage treatment and disposal plants;

(e) acquire and hold personal property for carrying out the objectives of the district;

(g) borrow money and execute bonds; and

(h) exercise miscellaneous powers (KRS 76.080).

### **Citizen Appeal Procedures**

The district board is required to develop a procedure and designate an independent hearing officer for the

hearing, review, and resolution of citizen complaints and grievances concerning service requests, billing, reimbursement for plumbing bills, inadequate property restoration after service and rude or inappropriate behavior by district employees (KRS 76.180).

## **Waste Management Districts**

### **Formation**

Waste management districts are made up of single counties or groups of counties (KRS 109.115). They may be created in two ways: (1) by following the procedures for establishing taxing districts in KRS 65.182-65.192, or (2) by adoption of fiscal court ordinances pursuant to KRS 109.041(13). Districts created in the second way may not levy or collect ad valorem property taxes. Garbage and refuse districts created before June 17, 1978, are deemed to be waste management districts if they meet federal and state standards (KRS 109.190).

### **Board of Directors**

KRS 109.115 sets forth requirements for the membership of the board of directors of a waste management district that possesses ad valorem taxing powers. Members of the board may be appointed by the county judge/executive, subject to approval by the fiscal court, or they may be named according to a formula giving proportional representation to every county in a district. In this case, the mayor of the most populous city in each county that participates in the district must be appointed as a member. A member of the board of directors may be removed from office pursuant to KRS 65.007 (109.115). The statutes do not specify the method by which a board of directors is appointed in a district that may not levy ad valorem taxes.

### **Powers**

KRS 109.041 grants counties a number of powers relating to the control of solid waste. KRS 109.115 gives the same powers to waste management districts.

Counties and waste management districts may own, maintain, and hold permits for solid waste management facilities. They may contract with third parties, including cities, for management of solid waste, and they

may condemn property pursuant to the Eminent Domain Act of Kentucky (KRS 109.041 and 109.160).

Whenever counties or waste management districts undertake the planning, construction and financing of solid waste facilities, they may collect reasonable rates, rentals and charges for the use of these facilities. They may also finance the projects with revenue bonds under KRS Chapter 58 (KRS 109.041 and 109.170).

Reasonable fees may be charged to transporters for the handling of solid waste at disposal facilities.

Counties and waste management districts may sell materials and energy that are recovered from solid waste, and they may enter into long-term contracts guaranteeing the supply of these products.

They may also enter into contracts with other counties in order to regionalize the management of solid waste (KRS 109.041).

A county or waste management district may employ an enforcement representative, who may inspect loads of solid waste and prevent the disposal of loads that do not comply with state regulations. If the county or district elects to implement a local inspection and enforcement program, it may finance the program from the landfill license fee or off-site facility fee in KRS 68.178 (KRS 109.042).

The owner or operator of each municipal solid waste disposal facility must provide quarterly reports to the county and district in which the facility is located, specifying the amount of waste received and its geographical source (KRS 224.43-330).

A county or district may require everyone living within its boundaries to use a particular waste management facility or collection system. The sole exception is for residents of cities that operate waste management facilities already in existence prior to June 17, 1978 (KRS 109.059 and 109.062).

Waste management districts and counties are authorized to adopt regulations relating to waste disposal (KRS 109.041 and KRS 109.120).



KRS 109.056 gives counties and waste management districts the power to levy an annual tax, not to exceed ten cents on each \$100 of assessed valuation of real property, for solid waste management area expenses and the redemption of bonds. They may also charge fees to all persons receiving waste management services. A waste management district that imposes these taxes and fees must receive authorization from the counties of which it is composed.

### **Solid Waste Management Plans**

The Natural Resources and Environmental Protection Cabinet is responsible for designating geographical subdivisions of the state as "solid waste management areas." Every five years each area must update its solid waste management plan and receive approval from the Natural Resources and Environmental Protection Cabinet. Each city and county must be included in the plan.

When two or more counties join with each other in the management, collection or disposal of solid waste, they may contract among themselves to determine the extent to which they will render services to the solid waste management area or provide services to each other. These contracts must specify the financial responsibilities and contributions of each county in the joint undertaking (KRS 109.082).

The property taxes and fees which counties and waste management districts may charge under KRS 109.056 may be collected directly by a solid waste management area, or the area may enter into agreements with public or private utilities to collect the money.

Counties are given primary responsibility for implementing solid waste management plans. If a county participates in a regional solid waste management area, the governing body of the area must implement those parts of the plan it assumes on behalf of the county. Cities, which may share waste disposal duties with counties, are allowed to develop and implement their own portions of the plans in some cases (KRS 224.43-340, 109.011 and 109.260).

## CHAPTER XI

### INTERGOVERNMENTAL RELATIONS

Throughout this report, various aspects of the relationship of county government to other units of government have been touched upon, but the subject has been given little direct attention. Intergovernmental relations covers the cooperation between different levels of government and can be divided into three main categories:

I. (a) Federal, State, Local. Some federal-aid programs follow this route, whereby the state and the local government divide matching funds. For example, some projects are supported 50% by U.S. funds, 25% by state funds, and 25% by local funds. The state, in such instances, may act as an intermediary.

(b) Federal, Local. In some federal-aid programs, the state government is bypassed and the U.S. agency deals directly with the local government.

II. (a) State, Local. One form of intergovernmental activity is state supervision of activities of local governments; for example, it has been pointed out in this report that the state local finance officer supervises some of the financial functions of the county.

(b) The state also renders technical assistance to the counties in such areas as planning and health.

III. (a) Local. Counties may cooperate with other counties in forming transit authorities, or in any area of mutual interest. Kentucky counties may also cooperate with counties in adjoining states (KRS 65.230, 65.240, OAG 77-632).

(b) Counties, Cities. These units of government may cooperate in areas of mutual advantage, in forming a planning commission, for example.

(c) Counties, Special Districts. The special district is a political subdivision within the county; in most instances the sheriff collects taxes for special districts.

These examples are not a complete listing; the areas of cooperation between governmental units are quite numerous. KRS 67.083 was amended in 1988 to enable and encourage counties to exercise their powers, other than the power to tax, in cooperation with other counties, cities, special districts or the state. This amended section sets criteria for contracts relating to intergovernmental cooperation, but does not require approval of the Attorney General, as does the Interlocal Cooperation Act.

### **Interlocal Cooperation Act**

In a number of instances, the statutes authorizing the provision of various services provide for cooperation between local governments. For example, counties and cities are permitted to create joint planning and zoning commissions (KRS 100.121) or housing authorities (KRS 80.262). The Interlocal Cooperation Act (KRS 65.210 to 65.300) gives local governments general authority to work together in providing services and facilities. In enacting the Interlocal Cooperation Act, the General Assembly expressed the goal of allowing local governments "to cooperate with other localities on a basis of mutual advantage...that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities" (KRS 65.220). Under this act local governments have formed agreements to work in a number of areas, including fire departments, police departments, corrections facilities, and landfills. Cooperative agreements have also been formed with local governments of neighboring states (OAG 77-632).

This act provides that any power or powers, privileges or authority exercised by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States. Any two or more public agencies may enter into agreements with one another for joint or cooperative action. Appropriate action of the governing bodies of the participating public agencies is required (KRS 65.240). The joint agreement must contain certain provisions provided for in KRS 65.250. All agreements made pursuant to KRS 65.210 to 65.300, other than agreements between a county and a school board, or written agreements relating to construction or maintenance of a municipal road or bridge, must be approved by the Attorney General (KRS 65.260), and filed with the county

clerk of the county which is a party to the agreement, the county clerk of the other participating county and the Secretary of State (KRS 65.290).

A public agency entering into a joint agreement as described may in certain instances borrow money and issue revenue bonds in accordance with the provisions of KRS 65.270.

Cities, counties, urban-counties, and charter counties may share their revenues by entering into interlocal agreements. The distribution of the revenues must be specified in the interlocal agreement (KRS 65.245).

#### **Appropriations From One Local Government to Another**

Counties may appropriate funds to the cities within their borders for the performance of necessary government functions. Cities may do the same for the counties in which they are located. The ordinance appropriating the funds must specify the purposes for which the money may be used. The county or city receiving funds must account at least twice a year to the grantor on the expenditure of the funds (KRS 65.157).

#### **Area Development Districts**

KRS 147A.050 establishes and defines the boundaries of fifteen area development districts or "ADDs." Area development districts provide research and planning assistance to local planning agencies, coordinate state and federal grants, and prepare area-wide development plans (KRS 147A.080 and 147A.090). Each district is governed by a board of directors composed of local government officials and citizens selected through procedures set forth in KRS 147A.060 and 109 KAR 5:010. Under KRS 147A.004, the Department for Local Government has the authority to regulate the operation of area development districts, to distribute state and federal funds to the districts and to require audits and financial reports.

#### **State Government Agencies**

##### **The Department for Local Government**

This department acts as a liaison between local and state governments, and between the state and certain

federal government programs. It provides technical assistance and information to units of local government and works directly with the area development districts (KRS 147A.021). The department is also required to conduct an annual training program to instruct county clerks, sheriffs, jailers and county treasurers in the proper procedures for the collection and expenditure of public moneys under their respective jurisdictions (KRS 147A.025). In 1994 the department was given the duties assigned to the state local finance officer in KRS Chapters 65, 68, and 131 relating to the control of local government funds.

### **The State Local Finance Officer**

The state local finance officer is the commissioner of the Department for Local Government or the commissioner's designated agent (KRS 68.001). This officer provides technical assistance and information to units of local government on fiscal management, purchases, contracts, and other matters. The officer coordinates for the Governor the state's general revenue sharing for local government and acts as a liaison with state and federal agencies. He or she also trains local officials in the management of public money and exercises all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360 (KRS 147A.020).

### **The State Local Debt Officer**

The state local debt officer is the Commissioner of the Department for Local Government or the Commissioner's designated agent (KRS 66.011). This officer studies debt management and publishes an annual report containing information on local government long-term debt and other data. To compile the information, the officer may require reports from local governments and may collect information from the state. He or she also exercises all administrative functions regarding local government bonds, as provided in KRS 66.045 (KRS 147A.020).

### **The Governmental Services Center**

At the request of the Department for Local Government, the Governmental Services Center at Kentucky State University may assist agencies of county government in conducting employee and management training programs (KRS 164.3571).





## FOOTNOTES

1. Herbert S. Duncombe, *County Government In America* (Washington, D.C.: National Association of Counties, 1966), pp. 18-19.

2. Robert M. Ireland, *The County Courts in Antebellum Kentucky* (Lexington: University of Kentucky Press, 1972), p. 2.

3. George Morgan Chinn, *Kentucky: Settlement and Statehood 1750-1800* (Frankfort: Kentucky Historical Society, 1975), p. 123.

4. Chinn, p. 222.

5. Kentucky Constitutions of 1792 and 1799.

6. Robert M. Ireland, *Little Kingdoms* (Lexington: University of Kentucky Press, 1977), pp. 1-2.

7. *Louisville Courier-Journal*, "Rowdy Rowan Again," September 2, 1890.

8. *Legislative Drafting Research*, p. 158.

9. Material from the sections on Creation of Counties and Constitutional Provisions Relating to County Offices is taken from "Local Government," by J. Michael Wilder and Prentice Harvey, *A Citizens' Guide to the Kentucky Constitution*, Research Report No. 137 (Frankfort: Legislative Research Commission, 1987), pp. 105-113.

10. Ireland, *Little Kingdoms*, pp. 101-140.

11. James T. Fleming and John E. Reeves, *A Comparison...The Present, The Proposed Kentucky Constitutions*, Informational Bulletin No. 52 (Frankfort: Legislative Research Commission, 1966), pp. 57-59.

12. J. E. Reeves and Hager W. Bach, *County Reorganization and the State Constitution* (Lexington: Bureau of Government Research, College of Arts and Sciences, University of Kentucky, 1951), pp. 2-9.



13. John A. Fairlie and Charles M. Kneier, *County Government and Administration* (New York: Appleton-Century Co., 1930), pp. 6-9.
14. Ireland, *Little Kingdoms*, pp. 28-29.
15. *Debates of the 1890 Constitutional Convention*, p. 3570.
16. *Debates of the 1890 Constitutional Convention*, p. 3569.
17. *Debates of the 1890 Constitutional Convention*, p. 3600.
18. *Bath County v. Daugherty*, 113 Ky. 518, 68 S.W. 436 (1902) and Walker v. Fox, 216 Ky. 33, 287 S.W. 228 (1926).
19. *Garner v. Harris*, Ky., 394 S.W. 2d 465 (1965).
20. *Avery v. Midland County*, 390 U.S. 474, 20 L. Ed. 2d 45, 88 S. Ct. 1114.(1967)
21. *Rentz v. Campbell County*, 260 Ky. 242, 84 S.W. 2d 44 (1935); *Hogg, County Attorney v. Rowan County Fiscal Court, et al.* 313 Ky. 387, 231 S.W. 2d 8 (1950).
22. *Casteel v. Sparks*, 312 Ky. 99, 226 S.W. 2d 533 (1950).
23. *Fiscal Court of Jefferson County v. City of Louisville*, Ky., 559 S.W. 2d 478 (1977).
24. Arthur Y. Lloyd and J. Allen Singleton, *Kentucky Government*, Informational Bulletin No. 137 (Frankfort: Legislative Research Commission, 1980), p. 100.
25. *Fiscal Court of Jefferson County v. City of Louisville*, Ky., 559 S.W. 2d 478 (1977).
26. *C.C.C. Coal Co., Inc. v. Pike County, Ky., Ky.*, 536 S.W. 2d 467 (1976).
27. *Kentucky Property Tax Rates*, Department of Revenue, Research Staff (Frankfort: Department of Revenue, 1978).

28. *Russman v. Luckett*, Ky., 391 S.W. 2d 694 (1965).
29. *Webster v. Nance* Ky., 362 S.W. 2d 723 (1962).
30. Aaron Wildausky, *The Politics of the Budgetary Process* (Boston: Little Brown and Company, 1964), pp. 1-2.
31. *Woodruff v. Shea*, 152 Ky. 657, 153 S.W. 1005 (1913).
32. *Wheeler v. City of Hopkinsville*, 269 Ky. 289, 106 S.W. 2d 1016 (1937).
33. Kentucky Department for Local Government, *Uniform System of Accounts for Kentucky Counties*, Revised 1986.
34. Allen E. Ragan, "State Supervision of County Finance in Kentucky," *Kentucky Law Journal*, 55, No. 1 (1966), p. 141.
35. See also *Droege v. Kenton County Fiscal Court*, 300 Ky. 186, 188 S.W. 2d 320 (1945).
36. Lynch, p. 120.
37. James A. Maxwell, *Financing State and Local Governments*, (Washington D.C.: The Brookings Institute, 1965), p. 196.
38. *Droege v. Kenton County Fiscal Court*, 300 Ky. 186, 188 S.W. 2d 320 (1945).
39. Maxwell, p. 202.
40. *Monroe County, et al v. Rouse*, Ky., 274 S.W. 2d 477 (1954).
41. The 1972 General Assembly amended the Workers' Compensation Law and made it mandatory for governmental units to provide workers' compensation insurance for their employees (KRS 342.630).
42. See *Kentucky Law Journal*, "The Employee Defense Act: Wearing Down Sovereign Immunity," 66, (1977-78), p. 150.

43. *Kestler v. Transit Authority of Northern Kentucky*, Ky., 758 S.W. 2d 38 (1988).

44. *Burns v. Moore*, 307 Ky. 167, 209 S.W. 2d 735 (1948).

45. See *Kentucky Local Planning Laws: Review and Analysis*, Legislative Research Commission, Research Report No. 134 (Frankfort: LRC, 1977).

46. *Jefferson Fiscal Court v. Queenan*, 314 Ky. 271, 234 S.W. 2d 949 (1950).

47. *Upchurch v. Clinton County*, Ky., 330 S.W. 2d 248 (1959).

48. *Chenault v. Collins*, 155 Ky. 312, 159 S.W. 834 (1913); *Gratzer v. Gertisen*, 181 Ky. 626, 205 S.W. 782 (1918).

49. *Dixon v. Giles*, 304 Ky. 354, 200 S.W. 2d 919 (1947).

50. *Harlan County v. Cole*, 218 Ky. 819, 292 S.W. 501 (1927).

51. *Smith v. Livingstone Company*, 195 Ky. 382, 242 S.W. 612 (1922).

52. *Walsh v. Asher*, 163 Ky. 377, 173 S.W. 808 (1915); *Albright v. Ballard*, 164 Ky. 747, 176 S.W. 185 (1915).

53. *Houston v. Boltz*, 169 Ky. 640, 185 S.W. 76 (1916).

54. *Duff v. Knott County*, 238 Ky. 71, 36 S.W. 2d 870 (1931).

55. *Denton v. Pulaski County*, 170 Ky. 33, 185 S.W. 481 (1916).

56. See *Duties of Elected County Officials*, Legislative Research Commission Informational Bulletin No. 114 (Frankfort: LRC, 1988), for a detailed discussion of each office.

57. *Fiscal Court Commissioners v. Jefferson County Judge/Executive*, Ky. App., 614 S.W.2d 954 (1981)

58. *Christian v. Belcher*, 888 F.2d 410, 414 (6th Cir,1989).

59. *Garrard County Fiscal Court v. Harold Layton*, 92 W.L. 85966 (Ky. App.).

60. *Matthews v. Allen*, Ky., 360 S.W. 2d 135 (1962)

61. *Commonwealth v. Hesch*, Ky., 395 S. W. 2d 362 (1965)

62. For an analysis of KRS Chapter 67A see *Kentucky Law Journal*, "The Urban-County: Kentucky's New Structure for Local Government," 62, (1973-74), p. 568.

63. See W. E. Lyons, *The Politics of City-County Merger: The Lexington-Fayette County Experience*, (Lexington: University of Kentucky Press, 1977).

64. *Pinchback v. Stephens*, Ky., 484 S.W. 2d 327 (1972).

65. *Holsclaw v. Stephens*, Ky., 507 S.W. 2d 462 (1974).

66. *Jacobs v. Lexington-Fayette Urban-County Government*, Ky., 560 S.W. 2d 10 (1978).

67. Jerome Dray, *The Law of Municipal Corporations* (Mundelein, Illinois: Callaghan and Co., 3rd ed. 1971), p. 174.

68. Sho Sato and Arvo Van Alstyne, *State and Local Government Law* (Boston: Little, Brown and Co., 1970), p. 11.

69. *Lowery v. County of Jefferson*, Ky., 458 S.W. 2d 168 (1970).

70. *Special Districts in Kentucky*, Legislative Research Commission, Research Report No. 48 (Frankfort: LRC, 1968), p. 1.

71. See *Lowery v. County of Jefferson* and OAG 77-433.

72. *Olson v. Preston Street Water District*, 291 Ky.  
155, 163 S.W. 2d 307 (1942).

## BIBLIOGRAPHY

### Books and Periodicals

Chinn, George Morgan. *Kentucky: Settlement and Statehood 1750-1800*. Frankfort: Kentucky Historical Society, 1975.

*A Citizens' Guide to the Kentucky Constitution*. Compiled by Linda Wood, Research Report No. 137, Frankfort: Legislative Research Commission, 1987.

*Proceedings and Debates of the Constitutional Convention*. Frankfort: E. Polk Johnson, 1890.

Dray, Jerome. *The Law of Municipal Corporations*. Mundelein, Illinois: Callaghan and Co., 3rd ed., 1971.

Duncombe, Herbert S. *County Government in America*. Washington, D. C.: National Association of Counties.

Fairlie, John A. and Charles M. Kneier. *County Government and Administration*. New York: Appleton-Century Co., 1930.

Fleming, James T. and John E. Reeves. *A Comparison...The Present, the Proposed Kentucky Constitutions*. Informational Bulletin No. 50, Frankfort: Legislative Research Commission, 1966.

Ireland, Robert M. *The County Courts in Antebellum Kentucky*. Lexington: University of Kentucky Press, 1972.

\_\_\_\_\_. *Little Kingdoms*. Lexington: University of Kentucky Press, 1977.

*Kentucky Law Journal*. "The Urban-County: Kentucky's New Structure for Local Government." 62 (1973-74).

Lloyd, Arthur and J. Allen Singleton. *Kentucky Government*. Informational Bulletin No. 137, Frankfort: Legislative Research Commission, 1980.

*Louisville Courier-Journal*. "Rowdy Rowan Again", September 2, 1890.

Luhr, Gary. *Kentucky Local Planning Law: Review and Analysis*. Research Report No. 134, Frankfort: Legislative Research Commission, 1977.

Lynch, Daniel W. *The Development of State and Local Debt in Kentucky, 1890-1962*. Lexington: Bureau of Business Research, University of Kentucky, 1966.

Lyons, W. E. *The Politics of City-County Merger: The Lexington-Fayette County Experience*. Lexington: University of Kentucky Press, 1977.

Maxwell, James A. *Financing State and Local Governments*. Washington, D. C.: The Brookings Institute, 1965.

Ragan, Allen E. "State Supervision of County Finance in Kentucky." *Kentucky Law Journal*, 55 (1966), 132-148.

Reeves, J. E., and Hager W. Bach. *County Reorganization and the State Constitution*. Lexington Bureau of Government Research, College of Arts and Sciences, University of Kentucky, 1951.

Sato, Sho and Arvo Van Alstyne. *State and Local Government Law*. Boston: Little, Brown and Co., 1970.

Waters, Harry Lee and William H. Raines. *Special Districts in Kentucky*. Research Report No. 48, Frankfort: Legislative Research Commission, 1968.

Wildansky, Aaron. *The Politics of the Budgetary Process*. Boston: Little, Brown and Co., 1964.

Wiley, William. *Duties of Elected County Officials*. Informational Bulletin No. 114, Frankfort: Legislative Research Commission, 1993.

### Cases

*Avery v. Midland County*, Ky. 390 S.W. 474 (1968).

*Bath County v. Daugherty*, 113 Ky. 518, 68 S.W. 436 (1902).

*Branti v. Finkel*, 100 S. Ct. 1287 (1980).

*Burns v. Moore*, 307 Ky. 167, 209 S.W. 2d 753 (1948).

*Casteel v. Sparks*, 312 Ky. 99, 226 S.W. 2d 533 (1950).

*C.C.C. Coal Co., Inc. v. Pike Co., Ky.*, 536 S.W. 2d 467 (1976).

*Christian v. Belcher*, 888 F.2d 410, 6th Circuit (1989).

*City of Louisville v. Jefferson Fiscal Court*, 307 Ky. 818, 212 S.W. 2d 107 (1948).

*Commonwealth v. Hesch*, Ky., 395 S.W. 2d 135 (1962)

*Droege v. Kenton County Fiscal Court*, 300 Ky. 186, 188 S.W. 2d 468 (1977).

*Fiscal Court Commissioners v. Jefferson County Judge/Executive*, Ky. App., 614 S.W. 2d 954 (1981).

*Fiscal Court of Jefferson County v. City of Louisville*, Ky., 559 S.W. 2d 478 (1977).

*Garner v. Harris*, Ky., 394 S.W. 2d 465 (1965).

*Garrard County Fiscal Court v. Harold Layton*, 92 W.L. 85966 (Ky. App.).

*Holsclaw v. Stephens*, Ky., 507 S.W. 2d 462 (1974).

*Jefferson Fiscal Court v. Queenan*, 314 Ky. 271, 234 S.W. 2d 949 (1950).

*Jacobs v. Lexington-Fayette County Urban-County Government*, Ky., 560 S.W. 2d 10 (1978).

*Kestler v. Transit Authority of Northern Kentucky*, Ky., 758 S.W. 2d 38 (1988).

*Louisville and Jefferson County Metropolitan Sewer District v. Joseph E. Seagram and Sons*, 307 Ky. 413, 211 S.W. 2d 122, 4 ALR 2d 588 (1948).

*Lowery v. County of Jefferson*, Ky., 458 S.W. 2d 168 (1970).

*Matthews v. Allen*, Ky., 395 S. W. 2d 362 (1962).

*Monroe County v. Rouse*, Ky., 274 S.W. 2d 477 (1954).



*Olson v. Preston Street Water District*, 291 Ky. 155, 163 S.W. 2d 307 (1942).

*Pinchback v. Stephens*, Ky., 484 S.W. 2d 327 (1972).

*Raque v. City of Louisville*, Ky., 402 S.W. 2d 697 (1966).

*Rentz v. Campbell County*, 260 Ky. 242, 84 S.W. 2d 44 (1935).

*Russman v. Luckett*, Ky., 391 S.W. 2d 694 (1965).

*Rutan v. Republican Party of Illinois*, 110 S. Ct. 2729 (1990).

*Ryan v. Commissioner of Water District No. 1 of Kenton County*, 220 Ky. 822, 295 S.W. 1023 (1927).

*Shearin v. Ballard County*, 103 S.W. 2d 292 (1937).

*State Board of Election Commissioners v. Jefferson County*, 260 Ky. 274, 84 S.W. 2d 23 (1935).

*Upchurch v. Clinton County*, Ky., 330 S.W. 2d 248 (1959).

*Walsh v. Asher*, 163 Ky. 377, 173 S.W. 808 (1915).

*Webster v. Nance*, Ky., 362 S.W. 2d 723 (1962).

*Wheeler v. City of Hopkinsville*, 269 Ky. 289, 47 S.W. 773 (1898).

*Woodruff v. Shea*, 152 Ky. 657, 153 S.W. 1005 (1913).